SECOND ANNIVERSARY OF THE ENACTMENT OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005: ARE CONSUMERS REALLY BEING PROTECTED?

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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SECOND ANNIVERSARY OF THE ENACTMENT OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005: ARE CONSUMERS REALLY BEING PROTECTED?

TUESDAY, MAY 1, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:30 a.m., in Room 2141, Rayburn House Office Building, the Honorable Linda T. Sánchez (Chairwoman of the Subcommittee) presiding.

Present: Representatives Sánchez, Johnson, Lofgren, Delahunt, Watt, Cannon, and Feeney.

Staff Present: Susan Jensen, Counsel; Michone Johnson, Chief Counsel; Daniel Flores, Minority Counsel; James Paul, Professional Staff; Norberto Salinas, Counsel; Elias Wolfberg, Professional Staff; Alexandrine DiBianchi; Erik Stallman, Senior Counsel to Representative Lofgren; Jason Everett, Legislative Assistant to Representative Watt; and James Paul, Professional Staff.

Ms. SÁNCHEZ. This hearing of the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law will now come to order. I will recognize myself first for a short statement.

Two years ago last month, President Bush signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act, pushing through the most complex and dramatic changes of our Nation's bankruptcy law in more than 25 years. Today's hearing, which focuses on consumer bankruptcy, is one of a series that our Subcommittee will conduct on the impact of the 2005 amendments on the bankruptcy system.

We have heard extensively from the consumer community that many of the consumer bankruptcy reforms were problematic. In particular, the act's means testing requirement to determine a debtor's ability to repay debts and mandate that consumer debtors receive credit counseling prior to filing for bankruptcy relief were two provisions that have proved to be problematic.

Recent developments in the subprime mortgage industry have brought to light additional problems with the act. After being lured into easy mortgage refinancing arrangements with teaser interest rates, more and more American homeowners find they are unable to make their monthly mortgage payments. As a result, many attempt to enter into bankruptcy to minimize the risk of losing their homes through foreclosure.

However, bankruptcy, which once served as a safety net for the honest, but unfortunate debtor, has now become a minefield of "gotchas." According to a recent survey of bankruptcy attorneys by the National Association of Consumer Bankruptcy Attorneys, 81 percent agreed that it is more difficult for people facing foreclosure to obtain bankruptcy relief since the 2005 act became law.

Let me give just one example. To satisfy the means test, a chapter 7 debtor must now complete Official Form 22, this form right here, that consists of 57 sections. This complex form requires a debtor to supply extensive financial information and supporting documentation. We are putting people through a bureaucratic maze while they are trying desperately to regain their financial footing.

I challenge my colleagues as homework this evening to see how long it takes you to complete this form. I have looked at it, and it looks substantially more difficult than our own Federal employee disclosure forms.

So it is against this backdrop and with the benefit of 2 years having passed since the enactment of the 2005 act that we look forward to hearing from today's witnesses.

To help us further explore these issues, we have a truly notable witness panel. We are pleased to have former Congressman Steve Bartlett, President of the Financial Services Roundtable; Ms. Shirley Jones Burroughs; Mr. Henry Sommer, President of the National Association of Consumer Bankruptcy Attorneys; and Ms. Yvonne Jones, the Financial Markets and Community Investment Director at the Government Accountability Office, or GAO.

I now, at this time, would like to recognize my colleague and Ranking Member, Mr. Cannon, the distinguished Member from Utah, for any opening remarks he may have.

Mr. CANNON. Thank you, Madam Chair.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was signed into law by President George W. Bush on April 20, 2005. The act represents one of the most comprehensive overhauls of the Bankruptcy Code in more than 25 years, particularly with respect to its consumer bankruptcy reforms. These consumer bankruptcy reforms include, for example, the establishment of a means test, a mechanism to determine a debtor's ability to repay debts; and the requirement of that debt is that the consumer debtor receives credit counseling prior to filing for bankruptcy relief. Most of the act's provisions went into effect October 17, 2005.

This Subcommittee held a hearing in July 2005 to assess how the executive order for United States Trustees and the Judicial Conference were proceeding regarding the formation and issuance of various rules, forms, guidelines, and procedures that were required under the law. In addition, the Senate Judiciary Committee held a hearing on the implementation of this law in December of last year. The upshot of both of those hearings is that, while it is a little too early to tell, there are some indicators that the law may have had a dramatic, positive effect on the American bankruptcy system.

For example, after the initial spike in personal bankruptcy filings, there were almost 620,000 filings in the first 2 weeks of October 2005. The number of filings has dropped to almost 20-year lows. The number of filings has gradually increased but remains significantly below the pre-reform numbers.

Another major focus of the reforms was to get debtors who can pay some of their unsecured loans, generally things like credit card debt, to pay what they can afford under a chapter 13 bankruptcy. The post-reform numbers do show that chapter 13 bankruptcies form a larger share of personal filings than they did at pre-reform. This is despite the fact that the Director of the Executive Office of the U.S. Trustees stated, at least at the bankruptcies conference, that only one half of 1 percent of all chapter 7 bankruptcies are being converted to chapter 13 bankruptcies under the means test. That low number of conversions may be reflected in the IRS methodology, which is more generous to filers post-reform than it was pre-reform, but again, data remains preliminary.

One interesting aspect of bankruptcy reform was the requirement that filers obtain credit counseling before filing for bankruptcy. This provision was put into place to educate debtors about their options and to give them some sound money management tools in the hopes that consumers would be able to avoid bankruptcy and the black mark on their credit history, if they could.

While a recent GAO study shows that the benefits of that provision is disputed, there have been some salutary aspects. For example, credit counseling services have essentially obtained a new Federal regulator in the form of the U.S. Trustees. GAO reports that the great majority of representatives are consumer advocacy groups, Federal agencies, industry participants, and other stakeholders.

Those we spoke with believe that credit counseling agencies approved by the trustee program have been reputable. In addition, no Federal or State law enforcement officials we spoke with identified any Federal or State enforcement actions related to consumer protection issues against any providers subsequent to their approval.

While the data, the hard data, are not readily available, the trustees report that nearly 10 percent of all credit counseling certificates have gone unused, indicating that many individuals may have been steered into alternative paths to bankruptcy. If those numbers hold up, it would mean that almost 37,000 individuals were saved from bankruptcy from May to October of last year alone. That is a significant achievement.

I would like to introduce a letter and a study into the record by the American Bankers Association, the Consumer Bankers Association, the Independent Community Bankers of America, the Financial Services Roundtable, and the Mortgage Bankers Association, among others.

Ms. SÁNCHEZ. Without objection, so ordered.

[The information referred to follows:]

LETTER AND STUDY BY THE AMERICAN BANKERS ASSOCIATION, THE CONSUMER BANKERS ASSOCIATION, ET AL., SUBMITTED BY THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH, AND RANKING MEMBER, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

FORM B10 (Official Form 10)(04/05)

United States Bankruptcy Court Western District of North Carolina

PROOF OF CLAIM

Name of Debtor Hoyt Burroughs
Shirley Burroughs

Case Number 07-30139

FILED
U.S. Bankruptcy Court
Western District of NC
FEB 28 2007
David E. Weich, Clerk

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property:
CitiFinancial

Name and address where notices should be sent:
P.O. BOX 70919
CHARLOTTTE, NC 28272-0919

Telephone number: 888-701-6280

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
☐ Check box if you have never received any notices from the bankruptcy court in this case.
☑ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor:
20-0051-0245967

Check here ☐ replaces
if this claim ☐ amends a previously filed claim, dated: ______

1. Basis for Claim
☐ Goods sold
☐ Services performed
☑ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☐ Other __________
☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☐ Wages, salaries, and compensation (fill out below)
Last four digits of SS #:
Unpaid compensation for services performed
from ______ (date) to ______ (date)

2. Date debt was incurred: 8/16/2002

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case was Filed: $ 0 (unsecured) 135.218.81 (secured) 0 (priority) 135218.81 (Total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.
☑ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim
☑ Check this box if your claim is secured by collateral (including a right of setoff)
Brief Description of Collateral:
☑ Real Estate ☐ Motor Vehicle
☐ Other __________

Value of Collateral: $ 135,218.81
Amount of arrearage and other charges at time case filed included in secured claim, if any: $ 14,789.03

6. Unsecured Nonpriority Claim $ ______
☐ Check this box if a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.

7. Unsecured Priority Claim
☐ Check this box if you have an unsecured priority claim
Amount entitled to priority $ ______
Specify the priority of the claim:
☐ Wages, salaries, or commissions (up to $10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. § 507(a)(3).
☐ Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(4).
☐ Up to $2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(6).
☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child – 11 U.S.C. § 507(a)(7).
☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8).
☐ Other – Specify applicable paragraph of 11 U.S.C. § 507(a)().

** Amounts are subject to adjustment on 4/1/2007 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. $10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8.*

8. **Credits:** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

9. **Supporting Documents:** *Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. If the documents are not available, explain. If the documents are voluminous, attach a summary.

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):
2/28/2007	Filing a proof of claim electronically deems the claim signed by the creditor or authorized person

THIS SPACE IS FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

245967

Disclosure Statement, Note and Security Agreement

Borrower(s) (Name and mailing address)	Lender (Name, address, city and state)	Account No. / Date of Loan
HOYT BURROUGHS SHIRLEY BURROUGHS 5836 LEWIS ROAD GASTONIA NC 28052	CITIFINANCIAL SERVICES, INC. 1744 E. DIXON BLVD. SHELBY NC 28152	Account No. 204412 Date of Loan 08/16/2002

ANNUAL PERCENTAGE RATE The cost of Borrower's credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost Borrower.	Amount Financed The amount of credit provided to Borrower or on Borrower's behalf.	Total of Payments The amount Borrower will have paid after Borrower has made all payments as scheduled.
11.95 %	$ 306,840.28	$ 113,938.76	$ 420,779.04

Payment Schedule:

Number of Payments	* Amounts of Payments	When Payments Are Due
1	$ 1,621.41	10/03/2002
359	$ 1,167.57	MONTHLY BEGINNING 11/03/2002
	$	
	$	

See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Security: If checked, Borrower is giving a security interest in:
[X] Real Property [ ] Mobile Home or Manufactured Home

Late Charge: NONE.

Prepayment: If Borrower pays off early, Borrower:
[X] will not [ ] may have to pay a penalty.
[X] will not [ ] may be entitled to a refund of part of the finance charge.

Demand Feature:
[ ] Not Applicable [X] This obligation has a demand feature.

* Does not include any insurance premium.

Additional Information:

Total amount of first month's payment including insurance premium, if any.	PRINCIPAL	FEES	DATE CHARGES BEGIN
$ 1,621.41	$ 113,938.76	$NONE	08/21/2002

Required Insurance Disclosure:
If Borrower grants Lender a security interest as indicated in this document, insurance to protect the Lender's interest in the collateral may be required. **If this loan is secured by real property, or mobile/manufactured home, then fire, extended coverage, collision and/or comprehensive casualty insurance is required naming Lender as loss payee, until the loan is fully paid.** The amount of such insurance must be sufficient to satisfy the unpaid balance of the loan, or be equal to the value of the collateral, whichever is less. Such insurance may be provided through an existing policy or a policy obtained independently and purchased by Borrower. Borrower may obtain such insurance from any insurer that is reasonably acceptable to Lender.

Optional Insurance Disclosure:
Borrower is not required to purchase optional insurance products, such as: Credit Life, Credit Disability, Involuntary Unemployment Insurance or any other optional insurance products. Lender's decision to grant credit will not be affected by Borrower's decision to purchase or decline to purchase optional insurance.

Coverage will not be provided unless Borrower signs and agrees to pay the applicable monthly premium in addition to the monthly loan payment disclosed above.

Borrower should refer to the terms contained in the applicable certificate or policy of insurance issued for the exact description of benefits, exclusions and premium rates.

If Borrower purchases insurance, Borrower's monthly payment will include both the monthly loan payment disclosed above and the applicable monthly premiums.

I/We request the following insurance:

Premium Due with the First Month's Loan Payment	First Year's Premium *	Insurance Type:
$NONE	$	
$NONE	$	
$NONE	$	

Hoyt Burroughs 8-16-02
First Borrower's Signature Date

Shirley Burroughs 8/16/02
Second Borrower's Signature

(* First year's premiums are calculated on the assumption that monthly loan payments are timely made). The initial term of the insurance is one month. Accrued but unpaid premium, if not paid earlier, will be due and payable at the time of the final payment on the loan. However, failure to pay premiums may result in termination of insurance as described below.

Termination of Insurance:
Borrower may cancel any of the optional insurance products office at any time. The optional insurance will terminate upon the earliest of the following occurrences:

(1) the Lender's receipt of Borrower's written request for termination;
(2) on the date when the sum of past due premiums equal or exceed four times the first month premium;
(3) termination pursuant to the provisions of the insurance certificate;
(4) payment in full of Borrower's Loan;
(5) death of Borrower.

TERMS: In this Disclosure Statement, Note and Security Agreement, the word "Borrower" refers to the persons signing below as Borrower, whether one or more. If more than one borrower signs, each will be responsible, individually and together, for all promises made and for repaying the loan in full. The word "Lender" refers to the lender, whose name and address are shown above.

PROMISE TO PAY: In return for a loan that Borrower has received, Borrower promises to pay to the order of Lender the Principal amount shown above, plus interest on the unpaid Principal balance from the Date Charges Begin shown above at the rate of interest of 11.9496 % per annum. Lender will compute interest on the unpaid Principal balance on a daily basis from the date charges begin until Borrower repays the loan. If Borrower does not make sufficient or timely payments according to the payment schedule above, Borrower will incur greater interest charges on the loan. On the N/A month anniversary of the Date of Loan shown above, the rate of interest applicable to the remaining unpaid principal balance shall decrease to N/A % per annum.

Any amount shown above as Fees has been paid by Borrower as fees. This amount is considered a prepaid charge and is in addition to interest calculated at the above Rate(s) of Interest. Any Fees are earned prior to any other interest on the loan balance. In the event of prepayment of the loan, prepaid Fees will not be refundable to Borrower.

Borrower's Initials: HB SB

Principal and interest shall be payable in the monthly installments shown above, except that any appropriate adjustments will be made to the first and final payments, beginning on the first payment date shown above and continuing on the same day in each following month until paid in full unless this loan is subject to a call provision as indicated, in which event the final payment date may be accelerated. Upon the final payment date or the acceleration thereof, the entire outstanding balance of Principal and interest evidenced by this Disclosure Statement, Note and Security Agreement shall be due and payable. Any payment which Lender accepts after the final payment date or the acceleration thereof does not constitute a renewal or extension of this loan unless Lender so determines.

Each payment shall be applied as follows: (1) monthly loan payments due (first to interest then principal), (2) insurance premiums due, (3) unpaid interest to the date of payment, if any, then (4) principal. Lender may collect interest from and after maturity upon the unpaid Principal balance at the maximum rate permitted under the then applicable law or the rate of interest prevailing at the time of maturity under this Disclosure Statement, Note and Security Agreement.

[X] If this box is checked, the following provision applies:

CALL: Lender, at its option, may declare any remaining indebtedness immediately due and payable 10 years after the date of this loan or annually thereafter on the anniversary of that date.

PREPAYMENT: Borrower may make a full or partial prepayment of the unpaid Principal balance at any time (check applicable box):

[X] without penalty.

[ ] If Borrower prepays the entire outstanding Principal amount of this loan within 30 months of the date of the loan, Lender may charge Borrower a prepayment penalty of 1% of the balance outstanding at the time of the prepayment in full. If prepaid after that date, there will be no prepayment fee.

When Borrower makes a prepayment, Borrower will tell Lender in a letter that Borrower is doing so. Lender will use Borrower's prepayments to reduce the amount of unpaid interest and charges and the amount of principal that Borrower owes under this Note. Partial prepayment will not affect the amount or due date of subsequent scheduled payments on the loan, unless Lender agrees in writing to any such delay or change, but may reduce the number of such payments. Upon partial prepayment, interest will continue to accrue on any remaining Principal balance. Borrower understands if the terms of this paragraph provide for a prepayment penalty, such terms do not apply to a renewal or refinancing of this loan by Lender, nor to the prepayment of this loan from the proceeds of any loan made in the future by Lender to Borrower. No prepayment charge will be collected if the loan is accelerated due to Lender's exercise of any due on sale clause in the Deed of Trust securing this obligation.

SECURITY AGREEMENT:

Security: Borrower's loan is secured by a Mortgage, Deed of Trust or Deed to Secure Debt dated 08/16/2002 on real property located at
5836 LEWIS ROAD GASTONIA, NC 28052
See the Mortgage, Deed of Trust or Deed to Secure Debt for terms applicable to Lender's interest in Borrower's real property ("Property").

TAXES AND FEES: Borrower will pay all taxes, assessments, and other fees payable on the Property. If Borrower fails to pay such amounts, Lender may pay such amounts for Borrower and the amounts paid by Lender will be added to the unpaid balance of the loan.

INSURANCE: If Borrower purchases any insurance at Lender's office, Borrower understands and acknowledges that (1) the insurance company may be affiliated with Lender, (2) Lender's employee(s) may be an agent for the insurance company, (3) such employee(s) is not acting as the agent, broker or fiduciary for Borrower on this loan, but may be the agent of the insurance company, and (4) Lender or the insurance company may realize some benefit from the sale of that insurance. If Borrower fails to obtain or maintain any required insurance or fails to designate an agent through whom the insurance is to be obtained, Lender may purchase such required insurance for Borrower through an agent of Lender's choice, and the amounts paid by Lender will be added to the unpaid balance of the loan.

RETURNED CHECK FEE: Lender may charge a fee of $ 25.00 for a check, negotiable order of withdrawal or draft is returned for insufficient funds or insufficient credit.

LOAN CHARGES: If a law that applies to this loan and that sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then (i) any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Borrower that exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under this loan or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge.

DEFAULT: Borrower will be in default if:

1. Borrower does not make any scheduled payment on time;
2. Borrower is (or any other person puts Borrower) in bankruptcy, insolvency or receivership;
3. Any of Borrower's creditors attempts by legal process to take and keep any property of Borrower, including the Property securing this loan;
4. Borrower fails to fulfill any promise made under this agreement; or
5. A default occurs under any Real Estate Mortgage or Deed of Trust which secures this loan or under any other mortgage or deed of trust on the real property.

Subject to Borrower's right to any notice of default, right to cure default, and any other applicable laws, if Borrower defaults, Lender may require Borrower to repay the entire unpaid Principal balance and any accrued interest at once. Lender's failure to exercise or delay in exercising any of its rights when default occurs does not constitute a waiver of those or any other rights under this agreement. Borrower promises and agrees to pay all costs, charges and expenses, including court costs and reasonable attorney's fees paid to an attorney who is not a salaried employee of Lender, incurred by Lender in any action to collect or enforce this Disclosure Statement, Note and Security Agreement or the Mortgage or Deed of Trust securing this loan.

EFFECTS OF DEFAULT: If Borrower defaults, Borrower will deliver the Property to Lender or, upon Lender's demand, assemble the Property and make it available to Lender at a reasonably convenient place. Lender may, without previous notice or demand and without legal process, peacefully enter any place where the Property is located and take possession of it. Lender does not have to notify Borrower before instituting suit if the note is not paid, and Lender can sue any or all Borrowers upon default of any Borrower.

The Property may be sold with notice at a private or public sale at a location chosen by Lender. At such public sale, Lender may purchase the Property. The proceeds of the sale minus the actual and reasonable costs of taking, removing, holding, repairing, and selling the Property, including reasonable attorney's fees and court costs and minus the cost of paying off and removing any superior liens or claims on the Property, will be credited to the unpaid balance of Borrower's loan. If the proceeds of the sale are not sufficient to pay off the entire balance plus costs, Borrower agrees to pay the remaining amount upon demand. If Borrower has left other property in the repossessed Property, Lender may hold such property temporarily for Borrower without any responsibility or liability for the property. Borrower waives benefit of homestead and exemption laws now in force or later enacted, including stay of execution and condemnation, on any property securing this loan, and waive the benefit of valuation and appraisement.

Notice of the time and place of a public sale or notice of the time after which a private sale will occur is reasonable if mailed to the Borrower's address at least five days before the sale. The notice may be mailed to Borrower's last address shown on Lender's records.

AW THAT APPLIES: North Carolina law and federal law, as applicable, govern this Disclosure Statement, Note and Security Agreement. If any part unenforceable, this will not make any other part unenforceable. In no event will Borrower be required to pay interest or charges in excess of those rmitted by law.

THER RIGHTS: Lender may accept payments after maturity or after a default without waiving its rights with respect to any subsequent default in yment. Borrower agrees that Lender may extend time for payment after maturity without notice. The terms of this agreement can be waived or anged only in a writing signed by Lender.

Borrower's Initials: HB SB

Mr. CANNON. Thank you, Madam Chair.

Ms. SÁNCHEZ. Thank you.

Mr. CANNON. That speaks to the importance of these bankruptcy reforms.

Finally, the Subcommittee is intending to hold a series of hearings on bankruptcy, and I would like to place on the record two topics which I believe are worthy of discussion: first, the need for more bankruptcy judges, which has been approved by the House and has failed in the other body on several occasions; second, the compensation of trustees in chapter 7 cases, who are paid $60 per case regardless of the time it takes to settle.

I thank you, Madam Chair. I appreciate your consideration. I yield back the balance of my time.

Ms. SÁNCHEZ. I thank the gentleman for his statement.

Our honorable Chairman of the full Committee, Mr. Conyers, who was here moments ago, had to leave for a memorial service. So, without objection, I would like to enter his opening statement into the record.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, CHAIRMAN, COMMITTEE ON THE JUDICIARY, AND MEMBER SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

It is no secret that I was strongly opposed to the bankruptcy legislation signed into law two years ago. In my judgment, the bill favored credit card companies and corporations over ordinary consumers; it exposed women and children to major new debts; and it did little to anything to crack down on abusive lending practices.

The bill's proponents asserted that it was a fair compromise that only punished wealthy debtors. But the bill I saw appeared to give creditors massive new rights to bring threatening motions against low income debtors. It permitted credit card companies to reclaim common household goods which are of little value to them, but very important to the debtor's family, and made it next to impossible for people below the poverty line to keep their house or their car in bankruptcy.

The bill's supporters argued it protected alimony and child support. But the bill I reviewed seemed to create major new categories of nondischargeable debt that compete directly against the collection of child support and alimony payments; and allowed landlords to evict battered women without bankruptcy court approval, even if the eviction posed a threat to the woman's physical well being.

At the same time the legislation appeared to do little to discourage abusive underage lending, nothing to discourage reckless lending to the developmentally disabled, nothing to regulate the practice of so-called "subprime" lending to persons with no means or little ability to repay their debts, and nothing to crack down on unscrupulous pay-day lenders that prey on members of the armed forces.

Today, at long last, we begin the process of evaluating this bill in cold hard light of day. We have asked the GAO to study many of these issues that I have raised, and I hope we can use the hearing process to further educate the Members about the real life impact of this legislation.

Once we obtain the facts, we can consider what actions are needed to relevel the playing field and allow hard working families the opportunity to begin their lives again.

Ms. SÁNCHEZ. And without objection, other Members' opening statements will also be included in the record.

Without objection, the Chair will be authorized to declare a recess of the hearing.

I am now pleased to introduce the witnesses on our panel for today's hearing. Our first witness, former Congressman Steve Bartlett, is the President of the Financial Services Roundtable. Mr. Bartlett served as a Member of Congress for the Third District of

Texas from 1983 to 1991 and as Mayor of Dallas, Texas, from 1991 to 1995.

Our second witness is Shirley Jones Burroughs. Ms. Burroughs is a resident of Gastonia, North Carolina, and has recently participated in the chapter 13 filing process.

Our third witness is Henry Sommer. Mr. Sommer is the President of the National Association of Consumer Bankruptcy Attorneys and a member of the National Bankruptcy Conference. Mr. Sommer is also the supervising attorney at the *pro bono* Consumer Bankruptcy Assistance Project in Philadelphia and is Editor in Chief of *"Collier on Bankruptcy"* and the entire Collier line of bankruptcy publications.

Our final witness is Yvonne Jones. Ms. Jones is the Director of the Financial Market and Community Investment Team at GAO. Prior to joining GAO in 2003, Ms. Jones worked at the World Bank, developing projects in the education sector in East Asian countries, assisting sub-Saharan African countries to reduce their commercial bank debt levels and help design financial restructuring programs in Eastern and Central Europe and the former Soviet Union.

I thank all of you for your willingness to participate in today's hearing. Without objection, your written statements will be placed into the record in their entirety, and we would ask that you limit your oral remarks to 5 minutes.

You will note that we have a lighting system that starts with a green light. At 4 minutes, it will turn yellow to warn you that you have a minute to wrap up, and then at 5 minutes, it will turn red. If you do notice that the light turns red, we would appreciate your best efforts to try to quickly wrap up your testimony.

After all of the witnesses have presented their testimony, Subcommittee Members will be permitted to ask a round of questions, subject to the 5-minute rule.

Mr. Bartlett, will you please now proceed with your testimony.

TESTIMONY OF MR. STEVE BARTLETT, PRESIDENT AND CEO, FINANCIAL SERVICES ROUNDTABLE, WASHINGTON, DC

Mr. BARTLETT. Thank you, Madam Chair and Ranking Member Cannon and Members of the Committee. It is a pleasure to be here. My name is Steve Bartlett. I am the President and CEO of the Financial Services Roundtable.

I do appreciate this Committee holding this oversight hearing. There is much to be learned about the bankruptcy reform law, and this Subcommittee helps us to understand it. I have attached several attachments to my statement, and I would ask that they be included in the record.

Ms. SÁNCHEZ. Without objection, so ordered.

Mr. BARTLETT. Madam Chair, bankruptcy reform is still new. It was passed 2 years ago, as you noted, by overwhelming bipartisan support; and our organization has been quite involved in the implementation of it.

So far, from the perspective of the American consumer and the economy, the new bankruptcy reform law is working quite well. Bankruptcy filings are down; more Americans than ever are getting quality credit counseling, and as a result, consumers have the opportunity to become better educated about financial management.

A few statistics: Consumer bankruptcy filing rates have dropped from an annualized rate of 1.5 million a year in the previous 5 years down to, last year, 573,000. We think they will normalize at around 700,000 to perhaps 800,000 a year. It dropped by about half.

Second, more consumers are choosing chapter 13 repayment plans over chapter 7, and that is as the law intended.

Third is counseling. We have conducted some surveys of the certified counselors, and our estimates are that about 57,000 traditional credit counseling sessions were occurring per month prior to the law, and that is now a total of 148,000 per month, so it, roughly, tripled as to the number of counseling sessions.

Now, recall that the principal policy objective of bankruptcy reform was the following: that people with above-median, income who can repay some or all of their debts, ought to do so while making chapter 7 bankruptcy a relief available to those who cannot. That was the intent, and that is what is happening.

Bankruptcy reform has also strengthened the ability of homeowners to use chapter 13 to stop foreclosures and to catch up on past-due mortgages. Several reforms were made on that. That is the intent of chapter 13; that is one of the outcomes. In these difficult times of an increased foreclosure rate, that is what is happening.

Third, credit counseling is now more readily available and is quality credit counseling. As the GAO report noted on credit counseling, the credit counseling reinforces the potential for good coming from the new law's credit counseling mandates.

According to the GAO, the Justice Department has generally done a good job in weeding out potential bad actors among counselors. We, in our industry, found that there was a large need which, frankly, we had not expected that is being filled, and that is the certification process of being able to certify the quality, nonprofit, good-guy counselors from the others.

There have been few complaints, if any, that I know of about competency of approved counselors. More consumers are getting better counseling and financial education than ever before. In fact, the Justice Department estimated that about 10 percent of consumers who get prebankruptcy counseling do not file for bankruptcy.

Now, as an industry, we are working to build on the law mechanisms to reach consumers sooner rather than later. We think that credit counseling can live up to its full potential better if we bring people in earlier for earlier counseling. We have instituted MyMoneyManagement.net over the Internet as a way of reaching consumers at the earliest indications that they have difficulties.

We have also instituted a program called "Hope" in which we reach out to homeowners who own mortgages, borrowers or homeowners, to say, "At the earliest signs of trouble, please call. We will work with you. We will work with the lenders by using independent counselors to try to settle the situation and to try to prevent foreclosing."

Counseling is good; earlier counseling is better than later counseling, and certified counselors are essential to the process. These agencies that have been certified are doing a good job. They are reaching out to consumers. We are getting no complaints. In fact, these agencies are quite beneficial to the American consumer. We are better off for the efforts of these agencies. They are on the front lines. They bear the heavy load.

Based on the reports that we received from the approved agencies, these agencies are working as Congress had intended. They are waiving counseling fees for those who cannot pay. Our reports indicate about 22 percent of those who come in for counseling have the fee waived. The fee itself is nominal, an average of about $50.

Now, much of the attention has been focused on prebankruptcy counseling, and I think the GAO did note, as did my stop sign, that it is time to stop.

Madam Chair, may I conclude with several points?

The bankruptcy reform legislation passed by the House by wide bipartisan margins is working. It is working for the consumer and the economy. Those who have need have access, full access, to bankruptcy; and above-median-income people who can repay a portion of their debts do so. Bankruptcies are down; credit counseling is up.

We urge you to continue to give the law a chance to work with adequate oversight.

Ms. SÁNCHEZ. Thank you, Mr. Bartlett.

[The prepared statement of Mr. Bartlett follows:]

PREPARED STATEMENT OF STEVE BARTLETT

SUMMARY OF TESTIMONY

Good morning, Madam Chair and Ranking Member Cannon, my name is Steve Bartlett and I am President & CEO of The Financial Services Roundtable. Thank you for inviting me to participate in this hearing to examine the implementation of Public Law 109–8, the bankruptcy reform statute that was signed into law two years ago.

I have several attachments to my statement and I would ask that they be included in the record.

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Our companies account directly for $65.8 trillion in managed assets, $1 trillion in revenue, and more than 2.4 million jobs.

The American consumer is the lifeblood of the economy and it is in the best of interests of Roundtable member companies to have well-educated consumers who manage debt prudently. With such breadth and debt, Roundtable members are in a good position to assess impact of legislative changes such as bankruptcy reform.

Bankruptcy Reform is still new. So far, from the perspective of the American consumer and the economy, the new bankruptcy reform law is working quite well. Bankruptcy filings are down, more Americans than ever are getting credit counseling and, as a result, consumers have the opportunity to become educated about prudent financial management. Let me cite some statistics to demonstrate my point:

- consumer bankruptcy filing rates have dropped dramatically to 573,203 in 2006 from an average annualized rate of 1.5 million for the prior 5 five years; private sector estimates for 2007 range from 500,000 to 800,000 consumer bankruptcies
- more consumers are choosing Chapter 13 repayment plans over Chapter 7 than under the old law; 27.5% consumer elected Chapter 13 under the old law or as compared to 35–40% under the new law who select Chapter 13 under the new law

- there were 1,230,195 total credit counseling sessions at Justice Department-accredited agencies as of March, 2007, compared to an average of 57,087 total counseling sessions per month for 2005, the year before bankruptcy reform

These numbers indicate that the means-test and the pre-bankruptcy credit counseling mandate are working. Recall that the principal policy objective of bankruptcy reform was to say that people with above-median income who can repay some or all of their debts ought to do so while leaving in place bankruptcy relief for those who really need it. That seems to be happening under the new law.

In addition, bankruptcy reform has strengthened the ability of homeowners to use Chapter 13 to stop foreclosures and catch up on past due mortgages. Even prior to the reform law, Chapter 13 was often used by consumers to save their home. Now, if mortgage lenders misapply mortgage payments in a Chapter 13 plan, they can be subject to punitive damages. As lenders adjust to this new requirement, Chapter 13 will be an even better option for saving the family home.

One major result of bankruptcy reform is increased credit counseling, which educates consumers. Credit counseling can help keep consumers from getting into financial trouble and, for those consumers for whom bankruptcy is an appropriate option, credit counseling keeps consumers out of financial trouble in the future.

In fact, the Department of Justice has estimated that 10% of consumers who get pre-bankruptcy counseling do not file for bankruptcy. This means that counseling is important and meaningful for some consumers, even if there is anecdotal evidence that it may not help others. Counseling is widely available from numerous sources through multiple channels-in-person counseling, telephone counseling and Internet counseling. To the extent that the counseling program could be made to work better for more consumers, we should do so. It would be a mistake to cut consumers off from financial education. We think the number of consumers who decide not to file for bankruptcy could be higher. Industry is working to build on the law to reach consumers much sooner in the financial cycle so that credit counseling can live up to its full potential. If consumers wait until they are completely underwater, counseling may not live up to its full potential. At the Roundtable, we have started mymoneymanagement.net as a way of providing consumers early access to quality credit counseling. In addition, we have instituted a program called HOPE to help homeowners and mortgage lenders negotiate win-win solutions when a mortgage becomes past due.

The non-profit counseling agencies have stepped up to the plate to make bankruptcy reform work. They applied to become certified agencies and promised to live by the ethical requirements established by the Justice Department. As the GAO noted, there have been few, if any, complaints about DOJ approved agencies. They perform a valuable public service by providing financial management advice to consumers and the lending industry is pleased they choose to participate in the pre-bankruptcy counseling process.

We are all better off for the efforts of these agencies. They are on the front lines and bear the heavy load. Based on the reports we have received from most of the approved agencies, it seems clear these agencies are acting as Congress intended. For instance, they are waiving counseling fees for those who can't pay. According to our statistics, counseling fees were waived for 22% of counseling sessions. And fees are relatively modest. At the Roundtable, the lending industry created a grant program to support credit counseling approved agencies, of which there are 157.

The credit lending industry has also created a website—mymoneymanagement.com—which guides consumers to DOJ-approved agencies. Some of our member companies are already directing customers to this site as soon as they show signs of financial difficulties to assist consumers earlier in the process.

It is important to understand that Justice Department certification is a significant enhancement for the quality of credit counseling available to consumers. There has not been a governmental "seal of approval" that identifies quality agencies before. Also, the increased attention around bankruptcy reform and credit counseling seems to have driven up demand for credit counseling.

While much of the attention has focused on pre-bankruptcy counseling, post-bankruptcy educational counseling is immensely important as well. This counseling comes at a very important time for the average consumer. The consumer, having filed for bankruptcy, will be ready to learn new financial skills.

The Roundtable believes that counseling requirements could be improved by regulations. In a comment letter, we suggested that pre-bankruptcy certificates should be valid for one year, rather than merely 6 months, to allow consumers more time to consider alternatives to bankruptcy. The Roundtable submitted a letter to the Department of Justice detailing regulatory changes and I have attached that letter to my statement. The Roundtable has also joined with the Consumer Federation of

America and a leading counseling trade association proposing consensus recommendations for regulatory changes to make the system work for all stakeholders—lenders, borrowers and counselors.

The Roundtable strongly believes each issue can be addressed through regulatory implementation strategies designed to further Congressional intent.

Prior to enacting Public Law 109–8, Congress had not reformed bankruptcy laws since 1978. We need to let the law mature before understanding its real impact.

Congress did the right thing for consumer and the economy in passing bankruptcy reform; now it's time to make sure that this legislative success is implemented correctly. Time will tell if the major consumer protection provisions in bankruptcy reform will work as intended. Under the new law, mortgage lenders can be subject to punitive damages for misconduct in Chapter 13 cases. And unsecured lenders have to consider voluntarily reducing balances or take increased losses in bankruptcy. And single moms and custodial parents have much-enhanced access to the assets of people who owe child support. Finally, the Federal Reserve is now engaged in a rulemaking process to improve the quality of financial disclosures made to consumers. When Congress voted for bankruptcy reform, Congress voted for these crucial consumer protections.

However, there are implementation challenges. For instance, as will be discussed in my full statement, the forms being produced by the Judicial Conference have the potential to disrupt the means-test by allowing debtors to claim deductions for non-existent expenses, for a car they do not own, for example. Bankruptcy reform was surely not intended to allow above-median income debtors to escape repayment by deducting expenses they don't actually have. We feel that this issue, as well as any others, should be addressed through the rulemaking process.

In conclusion, I would make several points. The bankruptcy reform legislation passed both the House and the Senate by wide, bi-partisan margins. The new law is working for the consumer and the economy. Those in need still have full access to bankruptcy and above median income people who can repay a portion of their debts do so. Bankruptcies are down; quality credit counseling is up; consumers have access to better information about financial management. What we need now is careful, bi-partisan oversight.

I thank the Subcommittee for conducting this hearing, and I am grateful for this opportunity to testify. I look forward to answering your questions.

ATTACHMENT

TESTIMONY OF STEVE BARTLETT

Good morning, Mr. Chairman and Ranking Member Schumer, my name is Steve Bartlett and I am President & CEO of The Financial Services Roundtable. Thank you for inviting me to participate in this hearing to examine the implementation of Public Law 109–8, the bankruptcy reform statute that became effective on October 17, 2005. I would also like to express my appreciation to the Department of Justice for providing leadership in implementing the provisions of Public Law 109–8.

Mr. Chairman, I have several attachments to my statement and I would ask that they be included in the record.

THE FINANCIAL SERVICES ROUNDTABLE

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $50.5 trillion in managed assets, $1.1 trillion in revenue, and more than 2.4 million jobs. As you might imagine, Roundtable members are in a pretty good position to assess impact of legislative changes such as bankruptcy reform.

OVERVIEW OF IMPLEMENTATION AND MACROECONOMIC PERSPECTIVE ON REFORM

Mr. Chairman, at least since the turn of the twentieth-century, the American people have always had access to bankruptcy when overwhelmed and unable to repay their debts. This is as it should be. There is no reason to force people to toil under the burden of debts they can never repay. For this reason, we have had a "fresh start" enshrined in our bankruptcy laws since 1898. During the Great Depression in 1930s, Congress created voluntary repayment plans as an alternative to straight liquidation.

However, as originally envisioned, straight liquidation under Chapter 7 was meant to be a last resort for people with no ability to pay. Congress continued America's progressive tradition by enacting Public Law 109–8 to channel higher income consumers into repayment plans while permitting the truly destitute and the poor to go into straight liquidation. The Roundtable supports both the letter and spirit of these important reforms.

Mr. Chairman, to provide a quick explanation of how the new law is being implemented, I would say the sense of the Roundtable member companies is that the law is working well and consumers as well as the economy are benefiting.

The number of bankruptcy filings has plummeted since 2004 and 2005. Some of this was certainly due to people rushing to file under the old law. Our companies and most analysts who have looked at the situation believe the drop off in filings is due to more than just people filing in 2005 to beat the new law.

We agree with those in Congress who have recently pointed out that losses to the economy that result from bankruptcy filings slow economic growth to some extent. When a business—any business, large or small—loses money because a customer files for bankruptcy, the business often has to increase what it charges other customers. I would submit that this is not good for consumers or the economy.

I know that some, including Senator Grassley who sits on this Subcommittee, have considered the effect of Public Law 109–8 and have put the total costs savings to the American economy at around $60 billion. Reduced losses of this size are a positive for the economy.

This leads me to my first question I would identify for the Subcommittee: How has bankruptcy reform affected the American economy? The answer to that question will take a cumulative effect over the next few years, but it is an important question to ask.

The low rate of consumer bankruptcies presents other significant questions for the Subcommittee as it tries to assess the success or failure of Public Law 109–8.

- Is the infrastructure in place to handle a surge in filings; specifically, are there enough certified credit counselors?
- Does the Department of Justice have enough resources to implement the means test?

I don't know the answers to these questions yet. I would, however, urge diligent monitoring of the implementation of the new law to ensure there are adequate resources available to make the system work.

CREDIT COUNSELING

I would also like to mention the potential for social and economic good coming from the pre-bankruptcy credit-counseling mandate. As the Subcommittee knows, in order to file for bankruptcy under the new law, a consumer must first get a certificate from an approved counseling agency attesting to the fact that the consumer has completed a counseling session. A certificate is good for 6 months. And, prior to receiving a discharge of debt, a consumer must undergo another counseling session designed to teach on-going financial skills.

The Department of Justice has publicly stated that they believe around 10% of the pre-bankruptcy certificates issued have not been used yet. This is a positive sign. But I think we can do better.

The industry funded a "no-strings-attached" grants program for every approved agency that sought a grant. There are 153 approved pre-bankruptcy counseling agencies and another 275 agencies have been approved to provide post-bankruptcy educational counseling.

These non-profit agencies, both NFCC and AICCA agencies, perform a valuable public service by providing financial management advice to consumers and we are pleased they choose to participate in the pre-bankruptcy counseling process. Based on the reports we have received from over 70% of approved agencies, it seems clear these agencies are acting as Congress intended. For instance, we believe they are waiving counseling fees about for those who can't pay. In October, 2006, fees were waived for 22% of counseling sessions. And fees are relatively modest at about $36 per session.

In addition, there has been a dramatic increase in traditional credit counseling sessions this year as compared to last year, which may be linked to the new law. I have attached to my statement a report prepared for the Roundtable that discusses what most approved counseling agencies are telling us about the situation on the ground.

One difficulty the Roundtable has identified is how to get to consumers sooner in the financial cycle. If we just wait until consumers are completely "under water," it may be that the counseling mandate will not live up to its full potential. To make counseling more effective, the Roundtable has created a website—mymoneymanagement.com—that refers consumers to DOJ-approved agencies for credit counseling *before they are considering bankruptcy.* In fact, some of our member companies are now directing their customers who fall behind in payments to this website so those consumers can get help earlier. All of us in the responsible lending community hope this will help consumers sooner, to the benefit of everybody.

I have one final note on credit counseling. As can be seen in my attachment, the Roundtable has received scattered reports that bankruptcy attorneys have been seeking to blunt the effect of the counseling mandate by steering clients to agencies they consider "friendly." We have been told by counseling agencies that in some cases attorneys pay directly for the counseling services. I would suggest to the Subcommittee that these business practices, if they continue, could erode the significant potential consumer benefits of pre-bankruptcy counseling. I am aware that members of the Subcommittee have written a letter to the Deputy Attorney General about one specific agency and the Roundtable applauds this oversight initiative.

THE MEANS TEST

In addition to credit counseling, one of the centerpieces of bankruptcy reform was the means test. In this regard, I would make several observations to the Subcommittee. The good news is that during the last year, the number of objections to the means-testing filed in court has been modest. The Department of Justice is diligently implementing the means-test.

In addition, to date, no creditor has filed a means-test objection as it has the right to do under the new law. I think this is so in part because higher income debtors are either skipping bankruptcy or are self-selecting to go into Chapter 13. Thus, there is *no evidence* at all to support the fears expressed by some before enactment of Public Law 109–8 that creditors would use this new right inappropriately.

The Subcommittee should know that one positive effect of the new law which I attribute to the means test is an increase in the number of Chapter 13 cases relative to Chapter 7 cases. It seems as if more consumers are opting for Chapter 13 in light of the new law. This is certainly a positive trend and one of the major goals of the legislation.

The final point I would make regarding the means-test involves the Judicial Conference rule making process. In particular, I would call the Subcommittee's attention to the fact that the forms created to measure repayment capacity to implement the means test seems to allow debtors to calculate repayment ability by deducting for expenses they don't actually have. For instance, consumers are directed to deduct an expense for owning a car even if they don't own one.

The Roundtable believes that this creates an inaccurate measure of repayment ability. The means test was designed by Congress to accurately measure repayment ability; allowing debtors to deduct phantom expenses is not consistent with Congressional intent. I have attached to my statement a letter submitted by associations commenting on the Interim Rules and making this point.

CONSTITUTIONAL CHALLENGES TO PUBLIC LAW 109–8

Mr. Chairman, the very full legislative record developed by Congress before the enactment of Public Law 109–8 focused on the manner in which debtor attorneys were responsible for abuses of the system. I certainly would never want to paint all attorneys as corrosive to the bankruptcy process. I know there are many well-intentioned and serious attorneys who represent consumers considering bankruptcy in an appropriate way. But, as the hearing record makes clear, there were bankruptcy mills that simply processed consumers without providing meaningful legal advice or looking out for the best interests of consumers. The Federal Trade Commission even issued a warning to the public about deceptive advertising by attorneys.

Congress sensibly reacted by imposing disclosure requirements on attorneys and prohibiting them from advising consumers to defraud creditors. These consumer protections were designed to help consumers by giving them full access to all the information they need to make informed choices.

So, it is with some concern that I must call the Subcommittee's attention to a lawsuit filed in Connecticut to have these consumer protections declared unconstitutional. The plaintiffs in this case believe that attorneys have a right under the Constitution to deceive the public or hide information from clients or advise consumers to commit fraud by running up debts just before filing for bankruptcy to game the means-test.

The Justice Department is aggressively litigating on the other side of the issue. However, if these consumer protections are invalided by judges, I hope Congress can find some way to protect unwary and unsophisticated consumers from the kinds of deceptive practices the Federal Trade Commission warned about.

CONCLUSION

In conclusion, I would make several points. The Roundtable supported bankruptcy reform and was pleased to see the legislation pass both the House and the Senate by wide, bi-partisan margins. The new law seems to be working for the consumer and the economy. It is working better than anticipated—those in need still have full access to bankruptcy and upper income people seem to be skipping bankruptcy or opting for repayment plans. Bankruptcies are down; more Americans are getting quality credit counseling; consumers have access to better information about financial management. What we need now is careful, bi-partisan oversight.

I believe that Public Law 109–8 has the potential to be of continuing great benefit to consumers and to the economy. As I said at the beginning of my testimony—"so far, so good." The work of the Congress is not over. There are challenges and surely there will be unforeseen bumps in the road. I thank the Subcommittee for conducting this hearing, and I am grateful for this opportunity to testify. I look forward to answering your questions.

Ms. Burroughs, will you now proceed with your testimony.

TESTIMONY OF SHIRLEY JONES BURROUGHS, GASTONIA, NC

Ms. BURROUGHS. Well, I am here today because I had to file bankruptcy due to, I guess, just not knowing what everything was that was in the contract when I first signed. I know there is no law to excuse not reading everything in a contract, but when we got to the closure, it was just not what I expected. You wanted to get it over with; you just rush and you sign papers.

I did not get, you know, anyone to explain what half the meanings of the documentations were. And then, when you cannot make payments, it is just a hard thing because you have no one to really explain what you did not do. And that is why I am here today, to try to help someone else.

Ms. SÁNCHEZ. You are talking, of course, about the closing on a house that you purchased——

Ms. BURROUGHS. Right.

Ms. SÁNCHEZ [continuing]. and the documentation that was required for that?

Ms. BURROUGHS. Correct.

Ms. SÁNCHEZ. Can you tell us just a little bit about how that sort of put you into the circumstance of having to consider bankruptcy as an option?

Ms. BURROUGHS. Just the fact that, you know, the payments—we had to refinance a couple of times because—due to the fact of my husband's losing income and that I lost my job at once. And we just had to refinance to try to stay on top of things, and refinancing was only making the rates go up instead of lowering the rates, and it just got to a point where, you know, what do we do?

Ms. SÁNCHEZ. As a result of not being able to make the payments, you considered bankruptcy as an option?

Ms. BURROUGHS. Correct.

Ms. SÁNCHEZ. Can you tell us a little bit about how you came to consider that as an option and what you decided to do, ultimately?

Ms. BURROUGHS. In November, I think it was, as a last resort, we decided, you know, we could not just keep not paying. We had to find an option. So we decided to file for bankruptcy and try to make things—you know, we wanted to make payments, but we knew we was just falling behind.

Ms. SÁNCHEZ. Did you consult with somebody before you decided to enter the bankruptcy process?

Ms. BURROUGHS. We did not consult with anyone. We found Attorney Wayne Sigmon, and I think we went to the Internet, and we found him, and we met him in court on the day of foreclosure, and we went through all the options with him. My husband did, anyway.

Ms. SÁNCHEZ. And was your decision to enter into bankruptcy sort of your attempt to save your home?

Ms. BURROUGHS. It was.

Ms. SÁNCHEZ. Okay.

Do you feel that the process that you went through in terms of buying your house, you know, the folks who did the financing for the house—do you feel they explained things adequately or honestly and gave you an assessment of what your payments would look like in the future?

Ms. BURROUGHS. No. Because when we went in—you know, our mortgage has changed so much. I mean, I think the mortgage has changed three times with new buyers and, you know, refinancing with different companies. It was just getting out of control. We never knew what to expect with payments, and it just was out of control.

Ms. SÁNCHEZ. Have you found the bankruptcy process to be an easy, straightforward, and clear process for you?

Ms. BURROUGHS. No, it was not easy. I mean, it is a lot of paperwork. But you do what you need to do. It is less stressful now, going through, you know, knowing I can make a payment, and everything is okay.

Ms. SÁNCHEZ. So how have your payments changed since going through the bankruptcy process?

Ms. BURROUGHS. I think we are making payments around, maybe, $2,000, I will just say, for the second and first mortgage all together. The payments went down at least $1,000, and they decreased even more since my husband has been placed on active duty, so——

Ms. SÁNCHEZ. Okay. Thank you so much for your participation. I am sure other Members of the panel will have questions for you. Thank you again, Ms. Burroughs.

[The prepared statement of Ms. Burroughs follows:]

PREPARED STATEMENT OF SHIRLEY JONES BURROUGHS

I am Shirley Jones Burroughs and I reside in Gastonia, North Carolina with my husband and two children, ages 16 and 19. My husband and I have worked all our lives to provide for our family. My husband is a truck mechanic and I work for an insurance company. We purchased our home in December, 1999. Our joint gross income for 2004 was $92,745.00 including $5,931 we withdrew from our retirement plans to make debt payments. In 2005 our gross income was $74,288.00 for my husband and $23,392.00 for me. In 2006 our gross income was $55,681.01for my husband, $28,220.00 for me, and $4,270.00 withdrawal from his retirement. We hated to dip into our retirement savings, but we were trying to keep up with our debts and avoid bankruptcy.

When we purchased our home, we entered into a first mortgage with Homecomings Mortgage and a second mortgage with EMMCO THE MORTGAGE SERVICE STATION INC., which was assigned to Associates Financial Services of America, Inc. (“Associates”). In March, 2000, and approximately four months after we purchased our residence, Associates contacted us and offered to refinance our mortgages. They stated that we could lower our payments through refinancing and consolidate all of our debts.

On March 30, 2000 we refinanced both mortgages through Associates. Our new first mortgage in the sum of $109,730.75 was used to pay the balance due to Homecomings Mortgage of $91,808.19 and the balance due to Associates of $16,374.12. The second mortgage in the sum of $10,199.98 was used to pay other debts including $2,888.55 to American General and $6,396.21 to CitiFinance. We received no cash proceeds from the refinancings. The new first mortgage payment was $1,170.22 per month with interest at 12.49 percent per annum and the new second mortgage payment was $214.37 with interest at 18 percent per annum.

On June 29, 2001 we again refinanced our second mortgage with CitiFinancial Services, Inc., (formerly Associates). In this refinancing our new loan amount was $9,990.24 with an Annual Percentage Rate of 15.45 percent. Our first payment was $184.86, and then we had 29 scheduled payments of $179.94 and then 90 more scheduled payments of $153.07. To my knowledge, we received no cash proceeds from this refinancing.

On August 16, 2002 we once again refinanced our two mortgages with CitiFinancial. These refinancings were done upon CitiFinancial's promise that our monthly payments would be reduced. In the 2002 first mortgage we financed $113,938.76 with interest at an annual percentage rate of 11.95 percent, a first payment of $1,621.41 and 359 payments of $1,167.57. 113,630.87 of the cash proceeds of this loan were paid to CitiFinancial. In the 2002 second mortgage we financed $10,350.57 with interest at an annual percentage rate of 14.61 percent payable in 30 scheduled payments of $186.43 and then 90 more scheduled payments of $150.11. The cash proceeds of this second mortgage refinancing went to payoff the June 29, 2001 CitiFinancial second mortgage. Again, we received no cash proceeds from either refinancing. All of the amounts added to our mortgages went to the fees and charges in the multiple refinancings.

In 2006 we began to fall behind in our mortgage payments to CitiFinancial mainly because I was unemployed for some time. On November 22, 2006 CitiFinancial commenced a foreclosure proceeding in the State Court to foreclose upon the first mortgage. The foreclosure sale date was scheduled for January 24, 2007.

After exploring available options to try to save our home from foreclosure, we found that our only real option was to file a Chapter 13 bankruptcy case. Through the Internet, we found our bankruptcy attorney, Mr. Wayne Sigmon. He explained that we could file a Chapter 13 case and cure the payment arrears on the first mortgage to CitiFinancial in monthly court payments over a 60 month period while continuing to make our regular monthly payments due to CitiFinancial after the filing of our bankruptcy case directly to CitiFinancial. As to the second mortgage, he advised that we could "lien strip" the second mortgage through a lawsuit he would file in our bankruptcy case against CitiFinancial since the market value of our residence was less than the principal balance due upon the first mortgage. In this way the second mortgage would no longer be a lien upon our residence and the balance due would be treated as unsecured debt in our Chapter 13 case.

Our Chapter 13 case was filed on January 22, 2007. Our plan called for monthly payments to the Chapter 13 Trustee of $1,050.00 plus direct payments to CitiFinancial "outside of the plan" of $1,160.00. These payments were feasible because our combined monthly net income was $4,332.64 which consisted of $3,132.65 from my husband's job and $1,200.00 from my unemployment compensation.

In our Chapter 13 case we scheduled CitiFinancial's first mortgage arrears to be $5,800.00 which was 5 monthly payments of $1,160.00 each. We scheduled the outstanding principal balance to be $132,802.53. Both of these figures came from monthly statements we had received from CitiFinancial. At our Chapter 13 meeting of creditors, we were shocked to learn that CitiFinancial filed a proof of claim in our case alleging that the first mortgage arrears as of our Chapter 13 filing date were $14,789.03 and that the total balance due is $135,218.81. A copy of this proof of claim is attached hereto as Exhibit "A". Obviously, if our arrears are $14,789.03, our Chapter 13 payments will increase significantly. Our attorney advised us that mortgage servicers often inflate claims in Chapter 13 cases and that he would review the documents and file a formal objection to this claim.

Our attorney has now reviewed our CitiFinancial mortgage documents and he has objected to the proof of claim. He has advised that our mortgage is a classic example of predatory mortgage lending. The mortgage interest is compounded on a daily rather than monthly basis. This is why we now owe somewhere between $132,000 and $135,000 on the mortgage while the original amount financed was $113,938.76. He advised that he has seen this type of interest computation in numerous CitiFinancial mortgages. Attached hereto as Exhibit "B" is an amortization schedule that shows how our mortgage balance would have been reduced if our loan had interest compounded monthly rather than daily. To my knowledge, we were never warned by CitiFinancial about the possibility that we would make numerous payments on our loan and still owe substantially more than we borrowed.

Our attorney has also advised that our mortgage contains an arbitration provision. CitiFinancial never explained to us how an arbitration provision works and I had never even heard of arbitration until my attorney brought it to my attention.

On March 22, 2007 my husband, a member of the Army reserve, was called to active duty and he has been deployed to Iraq. His net monthly military pay after taxes is $1,141.75 so that our combined monthly income has dropped from $4,332.64 to $3,024.27, a difference of $1,307.97 per month. With this decrease in income, I cannot afford to make both my Chapter 13 Trustee payments and my monthly mortgage payments to CitiFinancial. My attorney has filed a motion in the bankruptcy court requesting that, pursuant to the Servicemembers Civil Relief Act, the interest rate on our secured debts be reduced to 6 percent per annum while my husband is on active duty. If this motion is allowed, my direct monthly payment to CitiFinancial should be $767.07 (Exhibit "C" hereto), plus a monthly payment upon the alleged $14,789.03 arrears through the Trustee of $285.91 (Exhibit "D"), and an approximately 5% Trustee's commission on the arrearage payment ($14.29) for a total monthly payment to CitiFinancial of $1,067.27.

Even this payment will be a real struggle for us to make now that we have reduced income and greater expenses due to my husband's service in Iraq. If, as proposed by the consumer groups, the Bankruptcy Code allowed us to reamortize the CitiFinancial mortgage at a 6 percent per annum fixed rate over a thirty year term from the bankruptcy petition date, even with CitiFinancial's alleged balance due of $135,218.81, the payment would be $810.71 (Exhibit "E"), a monthly savings of $256.56. My children and I could dearly use this money to live on.

Ms. SÁNCHEZ. Mr. Sommer, will you please begin your testimony.

TESTIMONY OF HENRY J. SOMMER, PRESIDENT, NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS, PHILADELPHIA, PA

Mr. SOMMER. Thank you, Madam Chair and Members of the Committee. My name is Henry Sommer, and I am an attorney who specializes in bankruptcy and consumer law matters. For over 32 years, I have represented families and individuals in Philadelphia who have sought my help with serious debt problems, often involving foreclosure.

I am President of the National Association of Consumer Bankruptcy Attorneys, and I am testifying today on behalf of our 2,700 members. I would like to address my testimony to two principal topics: one, how the 2005 amendments have impacted consumer debtors, and two, how the bankruptcy laws should be amended to give homeowners a more effective remedy to deal with the foreclosure crisis our Nation is now facing.

In answering the fundamental question posed by this hearing, I would say that the 2005 amendments to the Bankruptcy Code are not protecting consumers; they are hurting consumers. To call this a "consumer protection act" is a classic example of George Orwell's "Newspeak." In fact, it is widely recognized as one of the most anticonsumer pieces of legislation ever passed by Congress.

The amendments were premised upon allegations that there was widespread abuse in the consumer bankruptcy system and that many who filed chapter 7 bankruptcy cases could afford to pay a significant portion of their debts. The reality is, this was never true, and the experience since the effective date of the amendments has borne that out. Very few debtors, only about one half of 1 percent, have been charged with abuse under the bill's vaunted means test, even though its threshold of abuse is very low. A debtor can be charged with abuse if a debtor is deemed able to pay as little as $100 a month toward her debts or deemed able to pay only a tiny percentage of what is owed.

Not surprisingly, we have seen no trace of the $400-to-$550 benefit which the bill's backers promised would redound from its passage to every household in the country. Indeed, abusive credit card practices, including higher and higher late charges, have only increased, at least until some companies recently agreed to change a few of those practices while testifying at hearings in this new Congress.

The biggest impact of the new law has been the enormous increase in the cost and burdens of filing a bankruptcy case. I doubt that it was the intention of even those who voted for the bill to increase documentation requirements, bureaucratic paperwork and other costs so much that honest, low-income and working families, not the high rollers at whom the amendments were supposedly aimed, are deterred or prevented from obtaining the bankruptcy relief they need. But that is what has happened.

The filing fee has increased by 50 percent. There are new fees for credit counseling and education which usually total another $100, and there has been such a great increase in the documentation required in every case that attorneys have had to increase their fees at least 50 percent. Bankruptcy has gone from being a relatively low-priced proceeding that can be handled quickly and efficiently to being an expensive minefield of new requirements, tricks and traps that can catch the innocent and unsuspecting debtor.

There is simply no reason, especially in the cases of lower-income debtors, that all of this extensive documentation demanded by the amendments is necessary. Every consumer bankruptcy attorney has had the experience of explaining these requirements to prospective clients only to have the clients go away discouraged and never return.

Every consumer debtor must obtain all payment advices for the 60 days before the bankruptcy is filed, a tax return or a tax transcript for the most recent year and sometimes additional years. They must provide an attorney with information detailing every penny of their income for the 6 months before the petition is filed; they must provide bank statements to the trustee and evidence of current income. They must attend a prepetition credit counseling briefing even if their problems are unavoidable medical catastrophes and not unwise spending. They must attend a financial management course in order to receive a discharge.

Attorneys must complete numerous additional forms, including a 6-page means test form that requires arcane calculations about which there are many different legal interpretations, and this is on top of the 20 or 30 pages of forms that were already required in every bankruptcy case.

According to the United States Trustee Program, attorneys must also provide clients with pages and pages of so-called disclosures, many of which are irrelevant to the client's case or inaccurate, which then requires additional time explaining them. And trustees in some districts demand even more documents. And if a consumer debtor is subject to an audit they have to provide even more, including 6 months worth of income documentation, 6 months of bank statements and an explanation of each and every deposit and withdrawal from any account over those 6 months. And the bankruptcy credit counseling requirement is primarily yet another barrier to bankruptcy. Even the credit counselors report that only 2 to 3 percent of the perspective debtors they see can even contemplate a debt management plan.

Now, most of this documentation is unnecessary, even to the ostensible goals of the 2005 amendments. In the vast majority of cases consumers are nowhere near the thresholds at which the abuse provisions kick in.

Ms. SÁNCHEZ. Mr. Sommer, your time is expired, so if you can conclude, and then we'll get back to you with questions.

Mr. SOMMER. Well, let me just say that the second thing I wanted to talk about was some amendments we proposed that would help people facing foreclosure. We think the Bankruptcy Code needs to be amended to deal with the new kind of mortgages, the exploding ARMs that were not present in 1978 when chapter 13 was drafted. And the details are attached to my testimony. Thank you.

[The prepared statement of Mr. Sommer follows:]

PREPARED STATEMENT OF HENRY J. SOMMER

TESTIMONY OF
HENRY J. SOMMER

PRESIDENT,
NATIONAL ASSOCIATION OF CONSUMER
BANKRUPTCY ATTORNEYS

SECOND ANNIVERSARY OF THE ENACTMENT OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005:
ARE CONSUMERS REALLY BEING PROTECTED UNDER THE ACT?

BEFORE THE
SUBCOMMITTEE ON ADMINISTRATIVE AND COMMERCIAL LAW
HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE

MAY 1, 2007

My name is Henry J. Sommer and I am an attorney specializing in bankruptcy and consumer law matters. For over 32 years, I have represented families and individuals in Philadelphia who have sought my help for serious debt problems, often involving mortgage foreclosure. I am the President of the National Association of Consumer Bankruptcy Attorneys (NACBA), an organization of attorneys who represent consumers in bankruptcy. Our over 2700 members represent a large proportion of the individuals who file bankruptcy cases in the United States Bankruptcy Courts, and I am testifying today on behalf of NACBA and its members.

I'd like to address my testimony today to two principal topics: How the 2005 bankruptcy amendments have impacted consumer debtors and how the bankruptcy laws should be amended to give homeowners an effective remedy to deal with the foreclosure crisis our nation is now facing.

I. IMPACT OF THE 2005 AMENDMENTS

In answering the fundamental question posed by this hearing, I would say that the 2005 amendments to the Bankruptcy Code are not protecting consumers. They were premised upon allegations that there was widespread abuse in the consumer bankruptcy system and that many who filed chapter 7 bankruptcy cases could afford to pay a significant portion of their debts. The reality is that this was never true, and the experience since the effective date of the amendments has borne that out. Very few debtors, only about one half of one percent, have been charged with abuse under the bill's vaunted means test, even though its threshold of abuse is very low – a debtor can be charged with abuse if the debtor is deemed able to pay as little as $100 a month toward her debts, or deemed able to pay only a tiny percentage of what is owed. Not surprisingly, we've seen no trace of the $400 to $550 benefit which the bill's backers promised would redound from its passage to every household in the country. Indeed, abusive credit card practices, including higher and higher late charges, have only increased, at least until some companies agreed to change a few of these practices while testifying at hearings in this Congress.

The biggest impact of the new law has been the enormous increase in the costs and burdens of filing an individual bankruptcy case. I doubt that it was the intention of even those who voted for the bill to increase documentation requirements, bureaucratic paper work, and other costs so much that honest low income and working families, not the "high rollers" at whom the amendments were supposedly aimed, are deterred or prevented from obtaining the bankruptcy relief they need. But that is what has happened. The filing fee has increased by 50%; there are new fees for credit counseling and education that usually total another $100; and there has been such a great increase in the documentation required to file a case that attorneys have had to increase their fees at least 50%.

This increase in cost and the widespread misperception that bankruptcy is no longer available (aggravated by collection agent misrepresentations to consumers) are the primary reasons that bankruptcy case filings have declined so precipitously. Certainly, the causes of bankruptcy cases – medical problems, job loss, divorce – have not lessened. The misperception about bankruptcy availability will gradually be corrected as word gets out that bankruptcy is still possible, but the problem of costs and burdens is one that Congress must address. Bankruptcy has gone from being a relatively low-priced proceeding that could be handled quickly and efficiently to being an expensive minefield of new requirements, tricks and traps that can catch the innocent and unsuspecting debtor. There is simply no reason, especially in the cases of lower income debtors, that all of the documentation demanded by the 2005 amendments is necessary.

Every consumer bankruptcy attorney has had the experience of explaining these requirements to prospective clients, only to have the clients go away, discouraged, and never return. Debtors must obtain all "payment advices" for the 60 days before the bankruptcy is filed; they must obtain a tax return or transcript for the most recent year before the petition is filed and sometimes additional years; they must provide an attorney with information detailing every penny of their income for the six months the petition is filed; they must provide bank statements to the trustee and evidence of current income; they must attend a prepetition credit counseling briefing, no matter how hopeless their situation and regardless of whether their problems were cause by imprudent credit decisions of unavoidable medical catastrophes; they must attend a financial management course in order to receive a discharge; attorneys must complete numerous additional forms, including a six page means test form that requires arcane calculations about which there are many different legal interpretations. According to the United States trustee program, attorneys must also provide clients with pages and pages of so-called disclosures, many of which are either irrelevant to the client's case or inaccurate, which then requires much additional time spent explaining why they are irrelevant or inaccurate. Moreover, trustees in some districts demand that debtors provide even more additional documents.

And if a consumer bankruptcy debtor is subject to an audit by the United States trustee, even more is demanded. The consumer is asked to provide six months worth of income documentation, six months worth of bank statements, and an explanation of *each and every deposit and withdrawal* from any account over those six months. Few consumers keep such records; many consumers in financial trouble operate on a cash basis because their credit cards have been cut off and they must make numerous ATM withdrawals to meet almost all of their expenses. To account for every expense paid with the cash withdrawn is often impossible. But many bankruptcy attorneys are asking for much of this information from every client because they are so afraid of being accused, after an audit, of filing false statements by an aggressive United States trustee program, as discussed below.

As described in the recent GAO report, the credit counseling requirement is not serving its supposed purpose. Even the credit counselors report, as did our members in a survey we conducted last year, that only 2%-3% of the prospective debtors they see could even contemplate a debt management plan. The counseling requirement serves primarily as yet another barrier to bankruptcy, especially in those districts where judges have ruled that debtors, even those facing emergencies, cannot file their bankruptcy cases until the day after they receive the credit counseling briefing.

And most of the required documentation is unnecessary to the ostensible goals of the 2005 amendments. In the vast majority of cases, consumers are nowhere near the thresholds at which the abuse provisions come into play. It should be sufficient for a debtor to provide any one of several documents to show income - a recent paystub with a year to date figure on it, or a tax return or transcript for the prior year, or a W-2 form. The trustee is free, as has always been the case, to demand additional documents in the small percentage of close cases in which they might actually make a difference. And it should be made clear that if an auditor later finds minor discrepancies in the numbers, discrepancies that would have had no effect on the results of the case, the debtor and the debtor's attorney should not be publicly accused, as they are now, of making "material misstatements." Such a serious accusation should be reserved for cases in which the debtor's misstatement had a significant impact on how the case was handled.

Of course, these are only some of the provisions in the 2005 legislation that are having the greatest impact. Among the dozens of changes made by that law, many cause significant harm to honest debtors in particular cases, including restrictions on the discharge, new requirements for chapter 13 that make it much less attractive and make it more likely that plans will fail, and provisions that make it harder for consumers to save a home from foreclosure or a car from repossession.

Moreover, the problems of consumer debtors are only exacerbated by the aggressive anti-consumer stance of the United States trustee program. We have seen in that part of the Justice Department the same kinds of things we have seen with the United States Attorneys and with other administrative offices. The independent decisions of career personnel and local offices have been subordinated to central directives from a politicized central office dedicated to serving the political interests of the administration – in this case by effectively becoming an arm of the administration's corporate backers in the financial services industry and trying to make bankruptcy as difficult and unattractive as possible. While spending enormous resources on going after minor document defects in papers filed by consumer debtors, the program has done virtually nothing to address the widespread fraudulent claims and charges of mortgage companies in bankruptcy, the practice of some creditor attorneys who have filed false documents on a regular basis, and other creditor abuses. If a single document filed by a debtor's attorney were as poorly documented as the unsupportable documents filed by creditors by the hundreds every day in the bankruptcy courts, the U.S. trustees would be seeking sanctions against that debtor's attorney. Yet the program devotes no significant resources to investigating creditor wrongdoing. The issues surrounding the United States trustee program deserve a hearing in themselves and I hope that such a hearing will be scheduled soon.

II AMENDMENTS THAT COULD HELP FAMILIES FACING FORECLOSURE

The second topic I'd like to address is how bankruptcy can be used to help solve the enormous foreclosure problems faced by literally millions of American families due to predatory lending, the bursting of the real estate bubble, and the fallout from years of virtually unregulated subprime mortgages. These are problems not just for the families whose homes are being foreclosed, but also for the communities where they live, which face a prospect of vacant properties that cause neighborhood blight and a decline in everyone else's property values.

Chapter 13 has traditionally been an important tool for families facing foreclosure. It has allowed them to save their homes by catching up on delinquent mortgage payments over a three to five year period while resuming their current mortgage payments. This model will not work, however, for people facing the "exploding ARMS", adjustable rate mortgages where the payments will go up by hundreds of dollars even if interest rates do not increase, because they cannot afford the higher regular monthly payments, much less anything toward the arrears.

Our organization, along with the Consumer Federation of America, the Center for Responsible Lending, and the National Consumer Law Center, has proposed changes to the bankruptcy laws that would allow such families struggling with their mortgages to use chapter 13 to save their homes. These changes are not an attempt to roll back the 2005 bankruptcy legislation. Rather, they primarily amend provisions enacted in 1978. They address changes in the mortgage market that have taken place since then, including the change from market rate fixed interest loans to the subprime and adjustable rate mortgages of today. And our proposal would not require the expenditure of government funds to deal with the foreclosure crisis.

The detailed proposals are attached to my testimony, but probably the most important part is the removal of the current limitation on modifying mortgages on a debtor's principal residence. Unlike any other secured debts, most home mortgages are protected from changes in their interest rates, payments, and other terms in chapter 13 cases. Allowing chapter 13 debtors to change these terms, within fair parameters that we have proposed, would permit reamortization of the mortgages at a fixed rate of interest with payments those debtors can afford.

This proposal would give all homeowners the right to the type of loan modification that is available to farmers and fishermen in chapter 12 bankruptcy and that some lenders are saying they now give to some borrowers. However, under our suggested amendments, the availability of this relief would not be limited, as it now is in many cases, by the terms of securitization trusts that prohibit such modifications. It would also not be subject to whims and bureaucracy of mortgage servicers. The experience of those who have sought loan modifications is that, at best, it requires hours and hours of negotiation and paperwork. Typically, while this is going on, the foreclosure is proceeding at full speed. All too often, we see homeowners coming to us at the last minute before a foreclosure sale because they thought they were going to be able to obtain forbearance or modification from their lenders and had therefore not consulted an attorney earlier.

It is in such cases that the prebankruptcy credit counseling is often a particular problem, and that is why we are proposing that families facing foreclosure be exempted from the counseling requirement. The supposed purposes of the counseling simply do not apply: The alternative of a debt management plan will do nothing to stop a foreclosure; indeed chapter 13 itself is a payment plan. To the extent the counseling might serve an educational function, that purpose is also served by the postbankruptcy financial education course, which will probably be much more effective when the recipient of the education is not absolutely frantic about the possible loss of the family home.

We have proposed several other statutory changes that would complement the basic proposal, including a provision to give the court control over the outrageous, often secret, fees and charges regularly added to a chapter 13 debtor's mortgage balance, and a special homestead exemption floor for elderly homeowners who, with years of accumulated equity, are among the most frequent victims of predatory lenders. Again, the details are in the attached documents.

In closing, let me say that is a pleasure to testify before this committee once again. I would be very happy to work with you and your staff on bankruptcy legislation that could provide meaningful relief for the financial problems faced today by American working families.

ATTACHMENT

Joint Memo for Proposed Bankruptcy Law Reform:

Solutions to Preserve Homeownership

April 27, 2007

By
John Rao, National Consumer Law Center
Henry J. Sommer, National Association of Consumer Bankruptcy Attorneys
Travis Plunkett, Consumer Federation of America
Ira Rheingold, National Association of Consumer Advocates
Ellen Harnick and Eric Stein, Center for Responsible Lending

The Center for Responsible Lending conducted a study of over six million subprime home mortgage loans, and projected that 2.2 million Americans with loans originated between 1998 and 2006 have lost or will lose their homes to foreclosure.[1] This calculation is conservative: It assumes that approximately 20% of subprime mortgage loans originated in 2006 will end in the loss of the home to foreclosure;[2] a recent Lehman Brothers study put the number at 30%.[3] The largest proportion of these losses have yet to come.[4] Without intervention, a staggering loss of homeownership is inevitable.

To help avert a foreclosure crisis, we propose an amendment to the Bankruptcy Code to empower bankruptcy courts to modify home mortgage loans as they can virtually every other kind of secured and unsecured debt. Our proposal does not seek to revisit the 2005 amendments to the Code. Rather, it seeks to remedy an anomaly created by a provision in the 1978 Bankruptcy Code, which singles out home mortgage lenders for special protection and makes the home mortgage on the primary residence virtually the only debt the court cannot modify and the home the only asset it cannot protect. The 1978 provision also denies low wealth and middle income consumers protections available to family farmers, corporations, and consumers wealthy enough to own two homes.

Our proposal would remedy this anomaly in Chapter 13 and provide a comparable solution in Chapter 7 by, generally, permitting bankruptcy courts to write down the debt to the market value of the home and restructure the mortgage.

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1 Center For Responsible Lending, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners* ("*Losing Ground*") (Dec. 2006) at 16, Table 6, available at HREF="http://www.responsiblelending.org/issues/mortgage/reports/page.jsp?itemID=31217189"§ MACROBUTTON HtmlResAnchor http://www.responsiblelending.org/issues/mortgage/reports/page.jsp?itemID=31217189; Center For Responsible Lending, *Subprime Lending: A Net Drain on Homeownership*, CRL Issue Paper No. 14 ("*Net Drain on Home Ownership*") (Mar. 27, 2007) at 3, Table 2, available at http://www.responsiblelending.org/pdfs/Net-Losership-3-26.pdf (updating the findings of *Losing Ground* to reflect data for the fourth quarter of 2006).

2 *Losing Ground*, at 11.

3 Lehman Brothers, *Mortgage Finance Industry Overview* (Dec. 22, 2006) at 1.

4 *Losing Ground* at 16, Table 6 (showing that close to 500,000 homes with1998-2006 vintage loans were lost to foreclosure as of May 2005).

It bears note that this is neither a radical nor an unprecedented change; long after the 1978 provision was enacted, many courts interpreted the Bankruptcy Code to allow the reduction of the loan balance to the market value of the home. This continued until 1993, when the Supreme Court interpreted the statutory language to preclude this result. [5]

More importantly, the solutions proposed here will enable families to save their homes while providing mortgage lenders with at least the value they would obtain through foreclosure; after all, a foreclosure sale can only recover the market value of the home, and foreclosure is an expensive procedure. The lender will be protected by recovering at least as much as it would from a foreclosure sale, while the borrower will be spared the loss of the home, and communities will be spared the deleterious effects of neighborhood foreclosures.

Recently, Credit Suisse's Fixed Income Research group issued a report stating that there would be an increase in foreclosure filings (and corresponding investor losses) as the Bankruptcy Code currently bars any realistic option of filing for consumer bankruptcy. Credit Suisse concluded that: "the bottom line is that new bankruptcy law appears to be harming mortgage borrowers, and for investors, this should result in rising losses."[6]

The reason for this is that the current law leaves very few options available to the vast majority of subprime borrowers who are currently stuck in so-called "exploding ARM loans" – that is, 2/28 hybrid adjustable rate mortgages, whose rates rise sharply two years after origination, resulting in massive and frequently unaffordable payment increases. [7] The current law limits the options of such borrowers to the following:

- <u>Continue to make payments on the loan at the higher rate.</u> Few can successfully continue in their loans because the debt-to-income ratios were unsustainably high even at the introductory "teaser" rates – often 50% to 55% of monthly income. For many borrowers, the increased payment will approach or exceed their total net monthly income after the interest rate adjustment.

- <u>Sell the house.</u> For many borrowers, selling their house is not a solution because the loans were underwritten with such high loan-to-value ratios that with the slow-down (or reversal) of home price appreciation, possible appraisal fraud, and the equity-stripping common to these loans, the sale would not net sufficient proceeds to cover the outstanding debt and any applicable prepayment penalties, which are included in over two-thirds of subprime loans. In some real estate markets it will not be possible to sell.

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[5] Nobleman v. American Savings Bank, 508 U.S. 324 (1993).

[6] Credit Suisse, *Subprime HEAT Update* (March 8, 2007) at 12, 9.

[7] Through the second quarter of 2006, hybrid ARMs made up 81 percent of the subprime loans that were packaged as investment securities. That figure is up from 64 percent in 2002. (*Structured Finance: U.S. Subprime RMBS in Structured Finance CDOs,* p. 2 Fitch Ratings Credit Policy (August 21, 2006))

- Refinance into another loan. The refinancing option is now largely unavailable, both because many borrowers lack sufficient equity to support a refinancing, and because many of the lenders that extended these loans are themselves filing for bankruptcy.[8]

- Negotiate with the lender for a loan modification, workout or loss-mitigation program. Working with their present servicer is often difficult because the loans are now held in trusts by many investors, presenting impediments, both legal and economic, to such agreements. Moreover, under current tax law, where it is necessary to reduce the principal balance of the loan, this reduction may constitute taxable income to the borrower. A significant advantage of bankruptcy is that there is no income tax liability for reductions of a loan balance that occur in the course of a bankruptcy case.[9]

- Lose the home to foreclosure. Unless the law is changed to permit borrowers to save their homes in bankruptcy, for many borrowers, foreclosure will be the only option. This is a result that entails financial disaster, and for some number of borrowers, loss of all family wealth and even homelessness.

Bankruptcy is an option of last resort for families in acute financial distress and on the verge of economic collapse. For a staggering number of families today, the precipitating event will be a catastrophic rate increase on an inappropriate and predatory mortgage loan. A solution such as the one we propose in this memo, that prevents the loss of the home through foreclosure while assuring lenders at least the value they could obtain through a foreclosure sale, is a public policy win.

Brief Overview of How Bankruptcy Works

Bankruptcy enables troubled debtors to seek relief from their debts. Typically, a debtor files for bankruptcy to forestall foreclosure, repossession or other debt collection litigation. Consumer bankruptcy functions as a form of social safety net, providing an equitable distribution of resources among creditors, and enabling debtors to get a fresh start. Generally, individual debtors can choose between filing under Chapter 7 and Chapter 13. Chapter 7 contemplates the liquidation of the debtor's non-exempt assets for the benefit of creditors, and the release of the debtor from further liability on most unsecured debts. In Chapter 13, the debtor establishes a plan for repaying a portion of

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[8] *See e.g.*, Gretchen Morgenson, *Crisis Looms in Market for Mortgages*, The New York Times (Mar. 11, 2007).

[9] In general, a creditor's write-down of a borrower's loan balance as part of a loss mitigation or loan restructuring is considered "income" under the tax code. Hence, a borrower who benefits from a loan modification of this sort may face the uncertainty of a potential tax assessment a year or so later, once again putting the home in jeopardy. The tax code has a specific income exclusion for loan reductions in a bankruptcy action. Section 108 of the Tax Code sets forth the tax consequences of a discharge of indebtedness. It contains two key exclusions: A debt forgiveness/discharge is not income if it occurs in a Title 11 case (ie a bankruptcy case), or when the borrower is insolvent (see 26 USC sec. 108(a)(1)). Subsection108(d)(3) defines insolvent as where "the excess of liabilities over the fair market value of assets."

her debts out of future earnings over a three to five year period, after which, most unsecured debts are discharged.

The problem with Chapter 7 is that, absent the lender's acquiescence, it does not permit the borrower to keep the house if there has been a default before the case is filed. Moreover, the 2005 amendments to the Bankruptcy Code make it more difficult and costly for borrowers to file Chapter 7 cases. This brings us to the problem with Chapter 13.

As currently drafted, Chapter 13 singles out home mortgage lenders for special protection that makes the home mortgage virtually the only debt that the court cannot modify and therefore the home the only asset it cannot protect. As the home is typically the largest and most important asset a family has, and the home mortgage loan is the family's largest single debt, the exclusion of the principal residence from modification prevents bankruptcy protection from reaching where it is needed most.

The way Chapter 13 works is that the secured and unsecured debts are divided into two separate classes, and within each class, all creditors are treated the same. Most secured debts (e.g., most cars, furniture) are preferred over unsecured debts (credit cards, installment debt), and are paid in full to the extent of the value of the collateral. For example, if a borrower owns an older car valued at $2,000, and the car secures a $4,000 loan, the first $2,000 of the debt is secured, and the rest is put into the class of unsecured debts, and paid pro rata along with the unsecured creditors.

The relevant provision is found at 11 USC §1322(b)(2), which empowers the court to "modify the rights of holders of secured claims, *other than a claim secured only by a security interest in real property that is the debtor's principal residence*, or of unsecured claims…" (emphasis supplied). "Modification" can entail reducing part of the principal balance, reducing the interest rate, or extending or altering the repayment schedule. The ability to modify the debt is possible for virtually every type of debt except for the mortgage on the borrower's primary residence.[10] One might expect that the home would be the most protected asset because it is the most fundamental, as reflected in the policy considerations that have led to state homestead exemptions, but the opposite is the case in the current federal bankruptcy law.

The home mortgage exception was enacted in 1978, a time when home mortgages were nearly all fixed-interest rate instruments with low loan-to-value ratios and were rarely themselves the source of a family's financial distress. The mortgage market has shifted considerably since 1978. Subprime lending in the last six years has increased significantly, primarily in the form of "exploding ARMs," where monthly payments increase by 40% after year two even if interest rates in the economy remain constant.

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[10] In 2005, the bankruptcy law was amended to treat some recent purchase money loans for automobiles in a similar fashion, but the dollar figures for such loans pale in comparison to the amount of a home loan and, depending on fair market value, the amount of equity associated with the residence. Moreover, such loans can still be modified with respect to interest rate and payment amounts.

These loans have relied on property appreciation, and in many cases appraisal fraud, and have left many borrowers with payments that they cannot afford and mortgages larger than the value of their homes. If the borrowers cannot restructure these debts, then they can neither save their home nor get back on their feet financially.

For years, bankruptcy courts found ways around the provision's harsh result by finding exceptions to the blanket prohibition on modifying home mortgage loans – by, for example, finding that the exemption applies only to extent that the outstanding loan balance does not exceed of the value of the home, or, because the rationale for the home mortgage exception was the need to incent home mortgage lending to facilitate home purchases, finding that it only applies to purchase money lending and not refinances. These "fixes" ended with the 1993 Supreme Court case of *Nobleman v. American Savings Bank*, 508 U.S. 324 (1993), in which the Court held that bankruptcy courts must apply section 1322(b) according to its express, literal terms. The practical effect of the current bankruptcy law is that borrowers stuck in unaffordable home loans must cure their defaults and, in addition, make monthly payments onthe loans according to their terms or lose their homes. No other creditor—in personal bankruptcy or business bankruptcy—can leave a borrower in such a position.

Not only is this policy unwise; it is unjust. Because the home mortgage exception applies only to primary residences, borrowers wealthy enough to own two homes can obtain relief from the mortgage on their vacation or investment home, thereby retaining at least one shelter for their family. Nor does the exception apply to the homes of family farmers, who file under Chapter 12, or to commercial real estate owned by businesses filing under Chapter 11.[11] The law thus deprives mostly low-wealth and middle class families of protections available to all other debtors.

Proposed Bankruptcy Code Amendments

The following is the package of necessary changes to the Bankruptcy Code – five to chapter 13 and one to chapter 7 – to help borrowers currently stranded in 2/28s:

<u>Changes to Chapter 13:</u>

1. <u>Strip-down.</u> Chapter 13 precludes bankruptcy courts from stripping down the mortgage loan principal balance to the value of the loan. As a consequence, the borrower is unable to refinance to another loan, to pay the loan off by selling the house without continuing to owe money to the lender, or to build equity for the family.

[11] The family farm Chapter 12 corollary to section 1322(b)(2), found at 11 USC § 1222(b)(2), provides the bankruptcy court with power to "modify the rights of holders of secured claims, or of holders of unsecured claims…" Similarly, the corresponding provision of Chapter 11, found at 11 U.S.C. § 1123(b)(5), contains language identical to that in section 1322(b)(2), reaffirming the exemption for loans secured by the debtor's primary residence, but imposing no corresponding exemption for a company's principle place of business or any other property.

- Solution: Eliminate the prohibition on modifying loans secured by mortgages on the debtor's primary residence. 11 USC § 1322(b)(2) should be modified as follows:

  1322 Contents of plan

  . . . .
  (b) Subject to subsections (a) and (c) of this section, the plan may –

  (2) modify the rights of holders of secured claims, ~~other than a claim secured only by a security interest in real property that is the debtor's principal residence,~~ or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

2. Reamortization. Chapter 13 requires that secured creditors be paid the value of their allowed secured claim within three to five years. Thus, even if section 1322 is changed as suggested above and the court is able to modify the loan in bankruptcy, this requirement would preclude most borrowers from benefiting from the change because with an amortization period of three to five years, the monthly payments even on a stripped-down loan will be too high for borrowers to afford. The Bankruptcy Code imposes no such requirement on family farmers who file under Chapter 12.

   - Solution: Add a new section 1322(b)(11) (and renumber current 1322(b)(11) as (b)(12)), tracking the language that currently makes this possible for family farmers under Chapter 12, which states:

     "(11) provide for payment of allowed secured claims secured by the debtor's principal residence consistent with section 1325(a)(5) of this title, over a period of up to 30 years from the date of the petition, except that payment of interest accruing after the date of filing of the petition on such claims shall be calculated at a fixed annual percentage rate in an amount equal to half of one percentage point greater than the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any publication that may supersede it, as of the applicable time set forth in 12 C.F.R. 226.32(a)(1)(i).; and"

   - In addition, add at the beginning of section 1325(a)(5): "except as otherwise provided by section 1322(b) of this title."

3. Interest rate and terms. Chapter 13 precludes bankruptcy courts from reducing the interest rate or converting a loan from an adjustable rate to a fixed rate loan to make it affordable and sustainable.

   - The amendment to 11 USC § 1322(b)(2)) described in paragraph 1 above will enable the court to reduce the rate or convert to a fixed rate, sustainable loan.

The language in paragraph 2 above will provide direction to the court to make the loan fixed rate and add a risk premium to the average 30 year fixed rate in the market. This 50 basis point risk premium is the same as the annual FHA premium.

4. Final pay-off of outstanding balance. The Code requires that payments to secured creditors under a consumer's Chapter 13 plan be made in "equal monthly payments" (11 USC § 1325(a)(5)(B)(iii)). Some courts have construed this language to prohibit a plan that would permit the debtor to pay off the claim of a home secured lender by making a final balloon payment for the balance owed with the proceeds of a refinancing at the end of the plan. The Code thus precludes the most likely basis on which most debtors could repay their mortgage loans.

   - Solution: Amend Chapter 13 (11 USC § 1325(a)(5)(B)(iii)) to make clear that the "equal monthly payments" requirement does not apply to the repayment schedule for home mortgage loans. The section should be revised as follows:

     § 1325. Confirmation of plan
     ". . .
     (iii) if the holder of the claim is secured by personal property --
     (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and
     (II) ~~the holder of the claim is secured by personal property,~~ the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan;"

5. Barriers to bankruptcy filing. The 2005 Bankruptcy Code amendments added a requirement that debtors undergo credit counseling before filing for bankruptcy. This causes a delay that borrowers facing bankruptcy cannot afford, and could make these proposed amendments meaningless for the borrowers who need them most. Since home loans could not be modified when the counseling requirement was added, it's clear that the requirement was not intended to prohibit debtors from responding to imminent foreclosure.

   - Solution: Waive the counseling requirement where a foreclosure proceeding has been commenced against the debtor's home by adding a new section 11 USC § 109(h)(5), which states:
     "(5) The requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that the holder of a claim secured by the debtor's principal residence has initiated a judicial or nonjudicial foreclosure on the debtor's principal residence."

Changes to Chapter 7

1. Redemption of property. Chapter 7 permits borrowers to "redeem" personal property by paying the lender the fair value of the property, and thereby extinguishing the debt that the property secures, but it does not permit the debtor to similarly "redeem" the home.

    - Solution: Amend 11 USC § 722 to include the underlined text below:

        > An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem the debtor's principal residence or tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien or the liquidation value of such property, whichever is less, in full at the time of redemption.

In addition to the foregoing essential changes, the following independent changes – one for chapter 13 alone, and five for both chapter 13 and chapter 7 – would provide important protections to bankruptcy debtors:

Additional Changes to Chapter 13:

1. Excessive Fees: Mortgage companies frequently charge unauthorized or excessive fees to debtors in Chapter 13, sometimes failing to disclose the fees until the debtor is no longer in bankruptcy having successfully completed the Chapter 13 case, or seeks to pay off the mortgage balance, thus further impeding the debtor's effort to stabilize financially.

    - Solution: add a new section 1322(c)(3), which states:

        > "No fees, expenses, or charges shall be added during or after the bankruptcy case to any secured debt provided for by the plan based upon any occurrence during the bankruptcy case unless such fees or charges are approved, as reasonable, lawful, and provided for by the underlying contract, by the bankruptcy court after notice and a hearing. Such fees, expenses or charges shall only be added to the secured claim to the extent that the secured debt is secured by property the value of which is greater than the amount of such claim. The failure of a party to obtain such approval shall be deemed a waiver of any claim for such fees, expenses or

charges for all purposes, and any attempt to collect them shall be deemed a violation of section 524(i) of this title."

Additional Changes Applicable to Both Chapters 7 and 13

1. Maintain Debtors' Legal Claims: Consumers are sometimes inadvertently deprived of the legal claims they have against predatory lenders or others because they are not aware that such claims are considered "assets of the estate" and so do not list them among their scheduled assets when the bankruptcy case is filed.

   - Solution: Add a new section 554(e) which provides:

     "(e) In any action in State or Federal court with respect to a claim or defense asserted by an individual debtor in such action that was not scheduled as property under section 521(a)(1), the trustee shall be allowed a reasonable time to request joinder or substitution as the real party in interest. If the trustee does not request joinder or substitution in such action, the debtor may proceed as the real party in interest and no such action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest or on the ground that the debtor's claims were not properly scheduled in a case under this title."

2. Mandatory Arbitration: Mandatory arbitration clauses are found in many consumer contracts, including home mortgages. The enforcement of these arbitration agreements under the Federal Arbitration Act is often in direct conflict with the goal of bankruptcy jurisdiction to have one centralized forum for the prompt resolution of disputes affecting the bankruptcy estate. In order to protect homeowners, both Fannie Mae and Freddie Mac have prohibited the use of arbitration clauses in home loans they purchase.

   - Solution: Prohibit the enforcement of arbitration clauses found in consumer contracts in bankruptcy proceedings by adding a new provision as follows:

     "28 U.C.C. § 1334, Bankruptcy cases and proceedings

     No written agreement for arbitration subject to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall be enforceable in any civil proceeding arising under title 11, or arising in or related to a case under title 11, in a case filed by an individual debtor whose debts are primarily consumer debts."

3. Homestead Exemption for the Elderly: A significant number of debtors facing foreclosure are elderly and have nonexempt equity in their properties because of low homestead exemptions in some states. They cannot save their homes under Chapter 13 because current law requires paying the value of their nonexempt equity to unsecured creditors. They cannot get Chapter 7 relief because Chapter 7 would cause them to lose their homes.

- Solution: Enact a homestead floor for the elderly, by adding adding a new 522(b)(3)(D) and amending 522(d)(1) as follows:

  "522(b)(3)(D): If the debtor, as of the date of the filing of the petition, is 55 years old or older, the debtor's aggregate interest, not to exceed $ 75,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence."

  Section 522(d)(1) would be amended to read:

  "The debtor's aggregate interest, not to exceed $ 20,200 in value or, if the debtor is 55 years of age or older $75,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor."

4. Preservation of rights. The Code was amended in 2005 to protect consumers from the loss of their claims due to bankruptcy court sales of loan portfolios "free and clear" of those claims to third party purchasers. However, the new provision, section 363(o), may not extend to transfers of portfolios pursuant to a chapter 11 plan.

   - Solution: Language added as a new section 1129(a)(17) would prevent the evasion of the intent of section 363(o) through this device:

     "1129(a)(17): If the plan results in the transfer to a person of any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time) then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale under applicable nonbankruptcy law."

5. Consumer Protection Violations: A final possible amendment would be Senator Durbin's amendment that obtained significant support in the debate on the 2005 Act, disallowing claims in which lenders had violated consumer protection laws.

   "Section 502(b) of title 11, United States Code, is amended--

   (1) in paragraph (8), by striking ``or'' at the end:
   (2) in paragraph (9), by striking the period at the end and inserting ";or" and

(3) by adding at the end the following:
"(10) the claim is based on a secured debt, if the creditor has failed to comply with any applicable requirement under section (c), (d), (e), (f), (g), (h), or (i) of section 129 of the Truth in Lending Act (15 U.S.C. §1639), sections 226.32 and 226.34 of Regulation Z (12 C.F.R. §§ 226.32 and 226.34) or any applicable state constitution, law or regulation that was in force at the time such debt was incurred".

Impact of Proposed Amendment on a Typical Case

A typical case would involve a debtor who refinanced her mortgage to pay credit card debts or to pay for home improvements. Such debtors are enticed by promises of interest rates lower than credit cards, tax deductibility of interest, and lower payments, generally at a teaser rate that is good for two years, but are not informed that the monthly payment does not include the escrow of taxes or insurance. In order to obtain the mortgage, she was required to refinance her existing mortgage, which was a fixed rate, amortizing loan with full escrows at about the same rate as the teaser rate, but a much lower rate than the rate would be adjusted to after two years. When the two-year adjustment came around, the debtor's payments increased by 40%. Because she could not afford the increased payments and because real estate values were beginning to stagnate or fall, the debtor could not solve the problem by refinancing or selling her house. She fell behind, and is facing foreclosure. See Appendix 1 for statistics demonstrating that this is a widespread case.

A recent example provided by a bankruptcy attorney of this unfortunately typical situation is a man who has been in a chapter 13 plan with the lawyer since October of 2005. His plan payments have gone up twice due to rate adjustments on his subprime hybrid ARM loan. He is a 77-year old, African-American widower on social security, and has contemplated just giving up his house as it is becoming more and more unaffordable and is consuming most of his limited income. Since he has no place to move to, he has decide to try to stick with the chapter 13 for now, but if his monthly mortgage payments continue to increase, he will eventually end up losing his home.

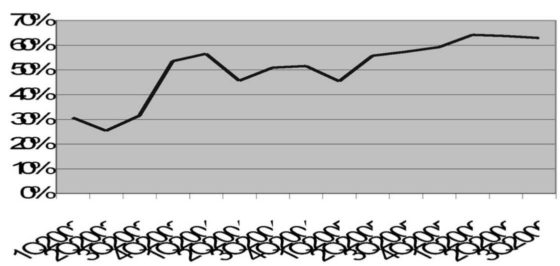
The traditional chapter 13 remedy for foreclosures, which has helped many in the years since chapter 13 was enacted in 1978, is to propose a plan to cure a default over a reasonable period of time (usually three to five years) and maintain current payments. This remedy works well for families that have fallen behind on their mortgage payments because of medical problems or unemployment, and can now resume payments. But it requires the family to be able to pay the current payments, plus pay a bit more toward the arrears each month. For families facing payment shock and payments they cannot afford because they were qualified for the loan based on a lower teaser rate (if ability to pay was even considered), such a plan is unworkable. Even if they are earning the same amount as when they got the mortgage, they cannot afford the current payments, much less anything toward arrears.

Under our proposed change in the bankruptcy law, the debtor's mortgage could be reamortized for 30 years at a lower fixed rate that would be affordable. The payments would be lower, because the rate would be lower than the adjusted subprime rate, and the debtor would not have to make additional payments toward arrears. The proposal would allow debtors to obtain the kind of loan modifications that can be obtained from some lenders (often with enormous difficulty, paperwork, and negotiation) and would not be dependent on the lender's whim, or the requirements of securitization trust documents that sometimes prohibit such modifications. In our example, the debtor would be able to obtain a modification to something like the market rate she had before the refinancing, which she could afford.

Scope of the Crisis – Potential Legislative Impact

In the United States, the proportion of mortgages entering foreclosure has climbed steadily since 1980, with 847,000 new foreclosures filed in 2005.[1] In 2006, lenders reported 354,554 new foreclosure filings for the fourth quarter alone, 47.5 percent higher than the fourth quarter of 2005.[2] In the past 18 months, there have been frequent stories in the media about risky lending practices and surges in loan defaults, especially in the subprime market.[3]

Subprime Foreclosure Starts as a Percent of Total Conventional Foreclosure Starts



Source: MBA National Delinquency Surveys

The graph above shows that foreclosure filings on subprime mortgages now account for over 60 percent of new conventional foreclosure filings reported in the MBA National Delinquency Survey (A "conventional" loan is one that is not insured or guaranteed by a government agency). This fact is striking given that only 23 percent of current originations are subprime, and subprime mortgages account for only 13 percent of all outstanding mortgages.

CRL forecasts that 2.2 million Americans with 1998-2006 vintage loans either have lost or will lose their homes in foreclosure.[12] The vast proportion of these losses have yet to occur. Absent some legislation to stem the tide of foreclosures, the impact will be devastating, not only for the families who lose their homes, but on the broader communities as well. The spillover effects on neighborhood and the wealth of other families will be substantial; according to the Woodstock Institute, families lose 1.44% of their house value for every foreclosure that occurs on their block. Thus, all families with $150,000 houses who live on a black with 3 foreclosures will lose $6,500 of their wealth.

There are no other policy changes that we can think of that could save these families their homes, avoid spreading losses to communities, and spare investors the losses associated with foreclosure sales, at no additional appropriated cost to the government.

[12] *Losing Ground*, at 16, Table 6; *see also Net Drain on Homeownership*, at 3, Table 2 (updating the findings of *Losing Ground* to reflect data for the fourth quarter of 2006).

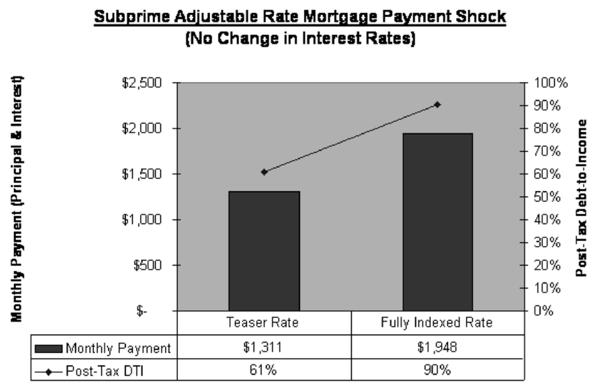
Appendix 1

Rate Reset Problem of 2/28 "Exploding" ARMs

Subprime lenders are routinely marketing the highest-risk loans to the most vulnerable families and those who already struggle with debt. Because the subprime market is intended to serve borrowers who have credit problems, one might expect the industry to offer loan products that do not amplify the risk of failure. In fact, the opposite is true. Lenders seek to attract borrowers by offering loans that start with deceptively low monthly payments, even though those payments are certain to increase. As a result, many subprime loans can cause "payment shock," meaning that the homeowner's monthly payment can quickly skyrocket to an unaffordable level.

Unfortunately, payment shock is not unusual, but represents a typical risk that comes with the overwhelming majority of subprime home loans. Today the dominant type of subprime loan is a hybrid mortgage called a "2/28" that effectively operates as a two-year "balloon" loan.[4] This ARM comes with an initial fixed teaser rate for two years, followed by rate adjustments in six-month increments for the remainder of the term of the loan.[5] Commonly, this interest rate increases by between 1.5 and 3 percentage points at the end of the second year, and such increases are scheduled to occur even if interest rates in the general economy remain constant; in fact, the interest rates on these loans generally can only go up, and can never go down.[6] This type of loan, as well as other similar hybrid ARMs (such as 3/27s) have rightfully earned the name "exploding" ARMs.

An example of the severity of payment shock that can occur on the typical exploding ARM for a $200,000 loan follows:



For the 2/28 ARM shown in the chart above, CRL is making conservative assumptions that correspond with typical mortgages of this type. To make the example even more conservative, we are assuming no general increase in interest rates, even though rates have increased substantially in the past three years. The example is based on an introductory teaser rate of 6.85 percent and a fully indexed rate of 11.50 percent.[7] The loan amount used in this example was $200,000, and, given the common practice of extending loans where the pre-tax debt-to-income ratio is 50 to 55 percent, we assume that this homeowner had a pre-tax income of $31,452, which equates to a post-tax income of $25,901.

At the end of the introductory rate period, this homeowner's interest rate rose from 6.85 percent to 9.85 percent, and the monthly payments jumped from $1,311 to $1,716, and again six months later to $1,948, an increase of over $600 a month.[8] This would be a large increase for most families, and is a huge burden for a family that already struggles with debt. At $1,948, this leaves only $210/month for all other expenses – including property taxes and hazard insurance, food, utilities, transportation, healthcare, and all other family needs.

Sadly, and all too commonly, this hypothetical homeowner had credit scores that would have qualified him or her for a fixed rate loan at 7.5 percent, which would have translated to monthly payments of $1,398—a challenging debt-load to be sure, but far more sustainable than the $1,948 fully-indexed monthly payment associated with the 2/28 loan illustrated above, a payment that can easily increase as interest rates rise.[9]

One would hope that this type of loan would be offered judiciously. In fact, hybrid ARMs (2/28s and 3/27s) and hybrid interest-only ARMs have become "the main staples of the subprime sector."[10] Through the second quarter of 2006, hybrid ARMs made up 81 percent of the subprime loans that were packaged as investment securities. That figure is up from 64 percent in 2002.[11]

Because of the proliferation of these loans, payment shock for subprime borrowers is a serious and widespread concern. According to an article in the financial press that ran a year ago, homeowners face increased monthly payments on an estimated $600 billion of subprime mortgages that will reset after their two-year teaser rates end.[12] Fitch Ratings calculated that by the end of 2006, payments would have increased on 41 percent of the outstanding subprime loans.[13]

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1 The rate of new foreclosures as a percent of all loans rose from 0.13 in 1980 to 0.42 in 2005, as reported in the *National Delinquency Survey*, Mortgage Bankers Association. 2005 new foreclosure filings statistic from Realty Trac in *Home Foreclosures on the Rise*, MoneyNews (February 23, 2006) at http://www.newsmax.com/archives/articles/2006/2/23/134928.shtml.

2 "More Than 1.2 Million Foreclosures Reported in 2006 According to RealtyTrac™ U.S. Foreclosure Market Report (January 25, 2007) http://biz.yahoo.com/prnews/070125/lath048.html?.v=87.

3 See, e.g., Saskia Scholtes, Michael Mackenzie and David Wighton, "US Subprime Loans Face Trouble," *Financial Times* (December 7, 2006); "Nightmare Mortgages," *Business Week* (September 11, 2006); Vikas Bajaj and Christine Haughney, "Tremors at the Door, *New York Times* (January 26, 2007); Matthew Padilla, "Subprime's Grip Slips," *The Orange County Register* (January 28, 2997); and "Vikas Bajaj "For Some Subprime Borrowers, Few Good Choices," *New York Times* (March 22, 2007).

4 A balloon loan is one that is not repayable in regular monthly installments, but rather requires repayment of the remaining balance in one large lump sum. While 2/28s are not balloon loans, the impact of higher interest rates at the end of the two-year teaser rate period, resulting in higher monthly payments, may force a borrower to seek refinancing.

5 *See, e.g, Structured Finance: U.S. Subprime RMBS in Structured Finance CDOs*, p. 2 Fitch Ratings Credit Policy (August 21, 2006).

6 Here we are describing the 2/28 because it is by far the most common product in the subprime market, but the concerns are the same with the 3/27, which differs only in that the teaser rate remains in effect for three years.

7 The typical 2/28 rises to 6-month LIBOR (now 5.35 percent) plus an index of 6.5 percent, or almost 12 percent.

8 Typically the rate increase at the first adjustment is capped somewhere between 1.5 and 3 percentage points. On this loan, the rate reached the fully indexed rate at the second adjustment two-and-a-half years into the loan.

9 A Freddie Mac researcher reports one out of five subprime borrowers could qualify for prime loans, (*see* Mike Hudson and E. Scott Reckard, *More Homeowners with Good Credit Getting Stuck in Higher-Rate Loans*, L.A. Times, p. A-1 (October 24, 2005)), and a lending industry association recently acknowledged that many borrowers placed into 2/28 mortgages could have qualified for thiry-year, fixed rate loans for a rate typically just 50 to 80 basis points (i.e., .5 or.8 of a percent) higher than the teaser rate on the loan they received. (s*ee* February 5, 2007 letter from CRL to Senators Dodd, Allard, Schumer, Reed and Bunning, attached as an exhibit to the Testimony of Martin Eakes before the U.S. Senate Committee on Banking, Housing and Urban Affairs, at p. 7 (responding to claims made by the Coalition for Fair and Responsible Lending (CFAL)), available at http://www.responsiblelending.org/pdfs/martin-testimony.pdf).

10 *See Structured Finance*.

11 *See Structured Finance*.

12 Jonathan R. Laing, *Coming Home to Roost*, p. 26 Barron's, February 13, 2006.

13 *See Structured Finance*.

Ms. SÁNCHEZ. Thank you, Mr. Sommer, we appreciate your testimony. And as I said, your written testimony will be submitted fully for the record.

Ms. Jones, if you would please proceed.

TESTIMONY OF YVONNE D. JONES, DIRECTOR, FINANCIAL MARKETS AND COMMUNITY INVESTMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Ms. JONES. Madam Chairwoman and Members of the Subcommittee, I appreciate the opportunity to participate in today's hearing on the impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. My statement focuses on the credit counseling and debtor education requirements of the act and is based on our report that was released last month.

The Bankruptcy Act requires individuals to receive credit counseling before filing for bankruptcy and to take a debtor education course before having their debts discharged. According to the act's legislative history, a goal of the prefiling credit counseling requirement is to ensure that consumers understand the options available to them and the consequences of filing for bankruptcy.

However, the requirement raised a number of concerns, in part due to ongoing investigations of some practices in the credit counseling industry, such as steering clients to inappropriate debt repayment plans. Also, some Members of Congress and others were concerned that the cost and availability of counseling and education services could be barriers to people wishing to file for bankruptcy.

Responding to those concerns, Congress required that providers of credit counseling and debtor education meet certain criteria and obtain approval from the U.S. Trustee Program.

Overall, we found that the Trustee Program's process for approving credit counseling and debtor education providers was generally systematic and thorough. As of April 2007, the Trustee Program had approved 159 credit counseling and 285 debtor education providers. Few formal complaints have been made against these providers and Federal and State law enforcement authorities with whom we spoke did not identify any recent enforcement actions against them under consumer protection laws.

And as of last month no credit counseling provider approved by the Trustee Program had had its tax exempt status revoked. However, the Internal Revenue Service told us it was examining the tax exempt status for these providers. The Trustee Program said it was carefully monitoring the situation.

We also found that the content of the credit counseling and debtor education sessions generally complied with statutory and program requirements. We did not find evidence that prefiling credit counseling agencies discourage clients from filing for bankruptcy. And very few clients appear to enter into debt repayment plans administered by these agencies.

At the same time, however, we found that the value of the credit counseling requirement is not clear. Anecdotal evidence suggests that by the time most clients receive counseling their financial situations are dire, leaving them with no viable alternative to bankruptcy. The requirement for credit counseling may thus be more of an administrative obstacle than a timely presentation of meaningful options. Because there's currently no mechanism for tracking the results of counseling sessions it is difficult to assess how well the counseling requirement is serving its purpose.

In our report we recommended that the Trustee Program develop the capacity to track and analyze the results of the prefiling counseling. The Trustee Program agreed with this recommendation.

We also found that there was less debate about the debtor education requirement. Most participants in the bankruptcy process believed this requirement was beneficial.

Concerning fees, we found that consumers are generally charged $50 or less per session, which industry observers and consumer advocates generally believe to be reasonable. The Bankruptcy Act requires that counseling be offered without regard to a client's ability to pay, and evidence suggests that fees are generally being waived as appropriate.

However, we found that providers' policies on fee waivers varied. To help ensure that all providers waive fees as appropriate, we recommended that the Trustee Program issue formal guidance on what constitutes a client's ability to pay. The program agreed with this recommendation and will begin developing such guidance later this year.

Finally, we found that the number of approved counseling and education providers appear sufficient to give consumers timely access to these services. And although in-person counseling and education sessions are not available in certain parts of the country, this concern is somewhat mitigated because the great majority of clients appear to be counseled by telephone or via the Internet.

Accessing services in foreign languages has been a challenge for some consumers. We found the Trustee Program is taking steps to better communicate providers' language and translation services. Currently, 64 credit counseling and 48 debtor education providers offer courses in Spanish, and two large nationwide providers can hold sessions in up to 150 languages.

In conclusion, we found that within a limited time frame the Trustee Program established policies and procedures for selecting credit counseling and debtor education providers, and thus far relatively few concerns have been raised about the competence of approved providers.

Madam Chairwoman, this completes my prepared statement. I would be happy to respond to any questions that you or other Members of the Subcommittee may have.

[The prepared statement of Ms. Jones follows:]

PREPARED STATEMENT OF YVONNE D. JONES

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, House of Representatives

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BANKRUPTCY REFORM

Value of Credit Counseling Requirement Is Not Clear

Statement of Yvonne D. Jones, Director
Financial Markets and Community Investment

GAO-07-778T

May 1, 2007

GAO Accountability•Integrity•Reliability

Highlights

Highlights of GAO-07-778T, a testimony before the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, House of Representatives

BANKRUPTCY REFORM

Value of Credit Counseling Requirement Is Not Clear

Why GAO Did This Study

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requires individuals to receive credit counseling before filing for bankruptcy and to take a debtor education course before having debts discharged. Concerns were raised that the new requirements could expose consumers to abusive practices by credit counseling agencies or become barriers to filing for bankruptcy. This testimony is based on GAO's report issued last month, and addresses (1) the process of approving counseling and education providers, (2) the content and results of the counseling and education sessions, (3) the fees charged, and (4) the availability of and challenges to accessing services.

To address these issues, GAO reviewed Trustee Program data and application case files, and interviewed a wide range of individuals and groups involved in the bankruptcy process.

What GAO Recommends

In its report, GAO recommended that the Department of Justice's U.S. Trustee Program, which is responsible for the new requirements, (1) develop the capability to track and analyze the outcomes of prefiling credit counseling, and (2) issue formal guidance on what constitutes a client's "ability to pay." The Trustee Program agreed with GAO's recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-778T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Yvonne D. Jones at (202) 512-8678 or JonesY@gao.gov.

What GAO Found

The Trustee Program's process for approving credit counseling and debtor education providers was designed to help ensure that providers met statutory and program requirements and demonstrated evidence of proficiency, experience, and reputability. The Bankruptcy Act set certain standards for providers, and the program's July 2006 rule clarified these standards and formalized the application review process. As of October 2006, the Trustee Program had approved 153 credit counseling and 268 debtor education providers. These providers have had few formal complaints lodged against them, and federal and state law enforcement authorities with whom we spoke did not identify any recent enforcement actions against them under consumer protection laws. No provider approved by the Trustee Program has had its federal tax-exempt status revoked, although four providers' tax-exempt status was being examined by the Internal Revenue Service.

The content of the required credit counseling and debtor education sessions generally complied with statutory and program requirements. Participants in the bankruptcy process largely believed the education requirement—a general financial literacy course—to be beneficial. However, the value of the credit counseling requirement is not clear. The counseling was intended to help consumers make informed choices about bankruptcy and its alternatives. Yet anecdotal evidence suggests that by the time most clients receive the counseling, their financial situations are dire, leaving them with no viable alternative to bankruptcy. As a result, the requirement may often serve more as an administrative obstacle than as a timely presentation of meaningful options. Because no mechanism currently exists to track the outcomes of the counseling sessions, policymakers and program managers cannot fully assess how well the requirement is serving its intended purpose.

Providers typically charge about $50 per session, and evidence suggests that fees are being waived as appropriate for clients unable to pay, as the Bankruptcy Act requires. Neither the statute nor Trustee Program guidance defines what constitutes "ability to pay," and policies vary among providers. Formal guidance on this issue would have several benefits, including ensuring compliance with a minimum standard for waiving fees.

The number of approved counseling and education providers appears sufficient to allow consumers to access these services in a timely manner. In-person sessions are not available in certain parts of the country, although the great majority of clients fulfill the requirements via telephone or Internet. The Trustee Program has efforts under way to help mitigate the challenges speakers of foreign languages can face in accessing services. Further, the bankruptcy courts have taken steps recently to help ensure that filers are aware of the potential consequences of filing for bankruptcy without the required counseling certificate.

Madam Chairwoman and Members of the Subcommittee:

I appreciate the opportunity to participate in today's hearing on the impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act).[1] My statement today focuses on the credit counseling and debtor education requirements of the act and is based on our report that was released last month and prepared at the request of members of the Senate and House Judiciary Committees.[2]

Among other things, the Bankruptcy Act requires individuals to receive credit counseling before filing for bankruptcy and to take a debtor education course before having their debts discharged.[3] According to the legislative history of the act, a goal of the prefiling credit counseling requirement, which became effective in October 2005, is to ensure that consumers understand the options available to them and the consequences of filing for bankruptcy. However, the requirement raised a number of concerns, in part due to ongoing investigations of certain practices within the credit counseling industry, such as steering clients into inappropriate debt repayment plans. In addition, some members of Congress and others were concerned that the cost and availability of counseling and education services could serve as barriers to those seeking to file for bankruptcy. In response to these concerns, Congress required in the Bankruptcy Act that providers of credit counseling and debtor education courses meet certain criteria and obtain approval from the Department of Justice's U.S. Trustee Program (the Trustee Program).[4]

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[1]Pub. L. No. 109-8, 119 Stat. 23 (2005) (amending various sections of Title 11).

[2]GAO, *Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear*, GAO-07-203 (Washington, D.C.: Apr. 6, 2007).

[3]Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 § 106, 119 Stat. 37-42. Specifically, the statute requires (1) individuals to receive budget and credit counseling from an approved provider before filing a petition in bankruptcy and (2) bankruptcy petitioners to complete an instructional course on personal financial management in order to have their debts discharged. For the purposes of this statement, hereafter we refer to the prefiling budget and counseling requirement as the credit counseling requirement and the predischarge personal financial management course as the debtor education requirement.

[4]In this statement, we use the term provider to refer to a provider of prefiling credit counseling or predischarge debtor education that has been approved by the Trustee Program. References to the Trustee Program in this statement refer collectively to the U.S. Trustees and the Executive Office for U.S. Trustees.

My statement discusses (1) the actions taken by the Trustee Program to approve credit counseling and debtor education providers; (2) the content and results of the counseling and education sessions; (3) the fees providers charge for counseling and education services, and the extent to which these services are provided regardless of clients' ability to pay; and (4) the availability of approved counseling and education services and the challenges consumers may face in receiving these services. Our report, and this testimony, are based on extensive audit work that included, among other things, a review of relevant policies, rules, guidance, and procedures; a case file review of a nonprobability sample of 43 providers approved by the Trustee Program; and interviews with representatives of relevant federal and state agencies, trade associations, consumer groups, and 10 approved providers of credit counseling or debtor education. We conducted our review from February 2006 through March 2007 in Washington, D.C., and Boston, Ma., in accordance with generally accepted government auditing standards.

In summary:

- We found the Trustee Program's process for approving credit counseling and debtor education providers was generally systematic and thorough, and designed to help ensure that the providers met statutory and program requirements and demonstrated evidence of proficiency, experience, and reputability. The Bankruptcy Act set certain standards for providers, and the program's July 2006 interim final rule clarified these standards and formalized the application review process. As of October 2006, the Trustee Program had approved 153 credit counseling and 268 debtor education providers. These providers have had few formal complaints lodged against them, and federal and state law enforcement authorities with whom we spoke did not identify any recent enforcement actions against them under consumer protection laws. As of the date of our report, no provider approved by the Trustee Program had had its federal tax-exempt status revoked. However, the Internal Revenue Service (IRS) was examining the tax-exempt status of four providers, and Trustee Program officials said that they were carefully monitoring the situation.
- The content of the required credit counseling and debtor education sessions generally complied with statutory and program requirements. Participants in the bankruptcy process largely believed the education requirement—a general financial literacy course—to be beneficial. In addition, we did not find evidence that prefiling credit counseling agencies discouraged clients from filing for bankruptcy, and very few clients appeared to be entering into debt repayment plans administered by these agencies. However, the value of the credit counseling requirement is not

clear. The counseling was intended to help consumers make informed choices about bankruptcy and its alternatives. Yet anecdotal evidence suggests that by the time most clients receive the counseling, their financial situations are dire, leaving them with no viable alternative to bankruptcy. As a result, the requirement may often serve more as an administrative obstacle than as a timely presentation of meaningful options. Because no mechanism currently exists to track the outcomes of counseling sessions—including how often they are followed by a bankruptcy filing—policymakers and program managers are unable to fully assess how well the requirement is serving its intended purpose. Our report recommends that the Trustee Program develop the capability to track and analyze the outcomes of prefiling credit counseling. In responding to a draft of our report, the Trustee Program said it concurred with this recommendation.

- Providers typically charge about $50 or less per session, and industry observers and consumer advocates we spoke with generally considered this amount to be reasonable. Evidence suggests fees are being waived as appropriate for clients unable to pay, as the Bankruptcy Act requires. Neither the statute nor the Trustee Program guidance defines what constitutes "ability to pay," and policies vary among providers. Our report recommends that the Trustee Program issue formal guidance on what constitutes ability to pay, so as to help reduce uncertainty among providers about when to waive fees and to provide a minimum benchmark for reducing or waiving fees. The program concurred with our recommendation.

- The number of approved counseling and education providers appears to be sufficient to allow consumers to access these services in a timely manner. Three large nationwide organizations represent about half of the market for both services. In-person counseling and education sessions are not available in certain parts of the country, but the great majority of clients seek to fulfill the requirements via telephone or Internet. The Trustee Program has efforts under way to help mitigate the challenges speakers of foreign languages can face in accessing services. Further, the bankruptcy courts have taken measures recently—on their filing forms and Web sites—to make the prefiling counseling requirement more conspicuous to filers who are not represented by an attorney.

Background

Federal courts have jurisdiction over bankruptcy cases and petitions can be filed in any one of the nation's 94 judicial districts. The Trustee Program, a component of the Department of Justice, oversees the bankruptcy process for most of these districts and acts to ensure compliance with applicable laws and procedures.[5] The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was signed into law on April 20, 2005, and most of its provisions became effective on October 17, 2005. The act made substantial changes to the Bankruptcy Code, including adding new credit counseling and debtor education requirements, as follows:

- *Credit Counseling.* To be a "debtor" (that is, eligible to file for bankruptcy), an individual, except in limited circumstances, must receive from an approved provider, within 180 days preceding the date of filing a bankruptcy petition, (1) a briefing outlining the opportunities available for credit counseling and (2) assistance with performing a budget analysis. Individuals may satisfy the counseling requirement post-petition if the individual certifies the existence of exigent circumstances that merit a waiver.[6]
- *Debtor Education.* Prior to discharge of debts, Chapter 7 or Chapter 13 debtors must complete a personal financial management instructional course from an approved provider.[7]

The Bankruptcy Act designated the Trustee Program as responsible for the implementation of these requirements, including the development of rules and guidance and the certification of approved credit counseling and debtor education entities.

Credit counseling agencies generally work on behalf of their consumer clients, who are typically deeply in debt, to help them manage their existing financial problems and to teach them better financial management skills for the future. The Federal Trade Commission (FTC) and others have noted that many credit counseling agencies operate honestly and fairly and provide valuable services to financially distressed consumers. However, starting in the 1990s consumer complaints about some

[5]Bankruptcy cases in Alabama and North Carolina are not under the jurisdiction of the Trustee Program and are administered instead by bankruptcy administrators in the judicial districts in those states.

[6]11 U.S.C. § 109(h).

[7]Consumers usually file for bankruptcy under one of two chapters of the Bankruptcy Code. Under Chapter 7, the debtor's eligible assets are liquidated (reduced to cash) and distributed to creditors in accordance with the procedures mandated by the court. Under Chapter 13, debtors file a repayment plan with the court agreeing to pay their debts over time, usually 3 to 5 years.

participants in the credit counseling industry spurred federal and state investigations into the activities of many credit counseling agencies. Over the past few years, the FTC has settled enforcement actions against several agencies, and the IRS has undertaken a broad examination effort of credit counseling organizations for compliance with the Internal Revenue Code.

The Trustee Program's Process for Screening Providers Is Designed to Help Ensure Statutory and Program Requirements Are Met

The Bankruptcy Act provided that credit counseling and debtor education agencies meet certain minimum requirements designed to ensure that providers are adequately qualified and to prevent abusive practices. For example, with regard to credit counseling, the Trustee Program may approve only entities that are nonprofit organizations, have an independent board of directors, provide full disclosures to clients on certain items, and provide trained counselors with adequate experience.[8] The act required the Trustee Program to undertake a thorough review of the qualifications of a credit counseling or debtor education agency before approving it to provide services. In July 2006, the Trustee Program adopted an interim final rule setting forth application procedures designed to ensure that only organizations meeting the minimum qualification standards set forth in the Bankruptcy Act would be approved to provide services.[9]

To implement the relevant provisions of the Bankruptcy Act, the Trustee Program established its Credit Counseling and Debtor Education Unit in June 2005 and developed a process for approving providers.[10] A wide range of industry participants told us that the Trustee Program had generally been successful in setting up an infrastructure, establishing guidance and

[8] Nonprofit status is a state law concept. The Bankruptcy Act does not require that a credit counseling agency be qualified as a 501(c)(3) tax-exempt organization in order to be an approved provider. However, an organization's federal tax-exempt status is one factor considered by the Trustee Program in determining an agency's nonprofit status for purposes of being an approved provider.

[9] Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees, 71 Fed. Reg. at 38076 – 38085 (2006). Qualifications for credit counseling providers, see 71 Fed. Reg. at 38078 - 38080 (to be codified at 28 C.F.R. § 58.15). Qualifications for debtor education providers, see 71 Fed. Reg. at 38082 - 38084 (to be codified at 28 C.F.R. § 58.25).

[10] OMB No. 1105-0084 (Exp. 12/31/2005), *Application for Approval as a Nonprofit Budget and Credit Counseling Agency*, and OMB No. 1105-0085 (Exp. 12/31/2005), *Application for Approval as a Provider of a Personal Financial Management Instruction Course.*

an application process, and approving providers within a very limited time frame. Credit counseling agencies applying to become approved providers—or reapplying to maintain their status as providers—must provide the Trustee Program with a variety of information that is used to evaluate the agencies' qualifications, including the written materials the agencies use in providing credit counseling services and information on debt management plans serviced by the agency.[11] In addition, applicants must disclose information about their nonprofit status and any actions that have affected the organization, including any revocations of licenses or accreditations, investigations, and legal, disciplinary or enforcement actions.

In general, we found that the Trustee Program's process for reviewing applicants was generally systematic and thorough and designed to ensure that the applicants approved by the program met the qualification standards set forth in the Bankruptcy Act. For example, the review process includes measures to evaluate the applicants' character and standing in the credit counseling industry. In particular, agencies that enter a high proportion of clients into debt management plans may be asked to provide additional information on the number and nature of these plans. In some cases we reviewed, the Trustee Program required applicants to make modifications to their programs or processes, such as adding additional material to the disclosure statements provided to clients, before it would approve the providers.

As of October 2006, the Trustee Program had approved 153 credit counseling providers. As required by statute, all of these providers were nonprofit organizations, and about 94 percent of them had federal tax-exempt status under section 501(c)(3) of the Internal Revenue Code. The program had also approved 268 debtor education providers by October 2006, of which at least one-third were organizations exempt under section 501(c)(3). Many providers were approved for both credit counseling and debtor education, and three large nationwide companies have provided about half of the sessions for both of these services.

There have been relatively few complaints raised about providers' competence or integrity. The great majority of representatives of

[11]Debt management plans refer to repayment programs offered by some credit counseling agencies. Under these plans, consumers pay off their unsecured debts by making a single, consolidated payment that the agency uses to disburse funds to creditors.

consumer advocacy groups, federal agencies, industry participants, and other stakeholders we spoke with believed that the credit counseling agencies approved by the Trustee Program have been reputable. In addition, no federal or state law enforcement officials we spoke with identified any federal or state enforcement actions related to consumer protection issues against any credit counseling providers subsequent to their approval. Between October 2005 and October 2006, the Trustee Program received 124 complaints about credit counseling and debtor education providers, out of more than 930,000 certificates issued. Our analysis found that many of the complaints were related to administrative issues, such as the timely issuance of a debtor's certificate. Twenty complaints alleged unfair or inappropriate practices, such as giving legal advice, discouraging customers from filing for bankruptcy, or failing to inform clients about the possibility of a fee waiver. Our review of a selection of complaints found that the Trustee Program took action to assess and follow up on each complaint. In no case did a complaint result in the Trustee Program removing a provider from the approved list, according to a program official.

As part of its Credit Counseling Compliance Project, which began in October 2003, IRS began a broad examination effort of the entire credit counseling industry, focusing on whether agencies met the requirements for federal tax exemption under section 501(c)(3) of the Internal Revenue Code.[12] As of March 2007, IRS had completed 47 examinations, which in all cases resulted in either revocation, proposed revocation, or other termination of the agencies' tax-exempt status. The IRS noted that these revocations occurred because these organizations served primarily to get clients into debt management plans, offered little or no counseling or education, and appeared to be motivated mostly by profit.

No credit counseling provider approved by the Trustee Program had had its federal 501(c)(3) tax-exempt status revoked as of March 2007, according to publicly available documents we reviewed. However, IRS officials told us that four of the credit counseling agencies still under examination were agencies approved by the Trustee Program. A Trustee Program official told us that although the Trustee Program was aware of the ongoing IRS examinations of these four agencies, it approved their

[12] To qualify for exemption from federal income tax under section 501(c)(3), an organization must be organized and operated exclusively for one or more exempt purposes specified by statute, such as religious, charitable, scientific, literary, or educational purposes.

applications to become counseling providers because the agencies had satisfied the qualification requirements of the Bankruptcy Act and the Trustee Program's interim final rule.[13] The official said that should IRS revoke an agency's tax-exempt status, the program would carefully review the reasons for the revocation and take whatever actions the program deemed appropriate.

Counseling and Education Sessions Meet Statutory and Program Requirements, but a Wide Range of Observers Question the Value of the Counseling Session

According to the Bankruptcy Act, the prefiling credit counseling session should provide clients with individualized assessments and help them develop a plan to respond to their financial situation. We did not find evidence that counselors were providing biased information and few clients appear to be entering debt management plans. However, a wide range of observers have questioned the value of the credit counseling requirement since by the time most clients received the counseling their financial situations were dire, leaving them with no realistic alternative to bankruptcy. By contrast, most observers we spoke with believed that the predischarge debtor education requirement—a general financial literacy course—was beneficial.

Credit Counseling Sessions Are Designed to Provide Debtors with Individualized Assessments

The Bankruptcy Act describes the required prefiling credit counseling as "an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outline[s] the opportunities for available credit counseling and assist[s] such individual in performing a related budget analysis."[14] The act requires that this session include an analysis of a client's current financial condition and the factors that caused this condition and help develop a plan to respond to the client's problems that would not involve incurring additional debt. Trustee Program officials told us that it was widely understood that the content of the prefiling counseling session would closely resemble the traditional sessions that reputable credit counseling agencies had provided for many years.

[13]Because these four agencies were under active examination at the time of our review, IRS and the Trustee Program did not provide us with the identities of these four providers or information on the status of their examinations.

[14]11 U.D.C. § 109(h)(1).

Our review of the Trustee Program's case files and counseling materials of 15 credit counseling providers—representing more than two-thirds of certificates issued—showed that the content of the credit counseling sessions, as described in the written materials, was in accordance with the requirements of the Bankruptcy Act. Credit counseling sessions generally began with providers collecting data on the client's finances, including sources and amount of income, debt, and expenses. Individual counselors then typically analyzed the data with a software program and provided the client with a personalized budget. They discussed the client's financial goals and potential opportunities for reducing spending and paying off debt. Counselors then described the client's options—for example, developing a budget, entering into a debt management plan, or filing a Chapter 7 or Chapter 13 bankruptcy. When the sessions were over, counselors issued certificates verifying that the client has completed the prefiling credit counseling requirement.

Although most providers offered clients the option of conducting credit counseling sessions in person, available data indicated that most debtors fulfilled their prefiling requirements by telephone or via the Internet. Trustee Program data collected on certificates issued between July 11 and October 17, 2006, indicated that 45 percent of all prefiling counseling sessions were conducted by telephone, 43 percent were conducted via the Internet, and 13 percent were conducted in person.[15] Academic researchers, counseling providers, and other experts we spoke with said that although in-person counseling may have advantages, telephone counseling can be an effective method of delivery. We did not find any significant research on the effectiveness of credit counseling facilitated via the Internet. To receive counseling using this method, a client generally logs on to the provider's Web site and inputs the same data on his or her finances that would be provided during a telephone or in-person session. On the basis of these data, the client is typically provided information and a financial analysis, including a description of the available alternatives. Trustee Program officials told us all approved Internet-based credit counseling sessions were required to include a separate component in which the client communicated individually with a counselor.

Prior to passage of the Bankruptcy Act, some consumer advocacy groups, policymakers, and others expressed concerns that credit counseling provided under the act might sometimes be biased and not in the clients'

[15] Percentage does not add up to 100 due to rounding.

best interests. Specifically, concerns existed that providers might inappropriately discourage clients from filing for bankruptcy and instead encourage them to enter into debt management plans that benefited the agency but not the debtor. However, available evidence indicates that only a very small number of clients—fewer than 2 percent—receiving prefiling credit counseling have entered into any debt management plan.[16] In general, representatives of consumer groups, panel trustees, and others told us that they had not observed cases where prefiling counseling agencies inappropriately encouraged clients to avoid filing for bankruptcy.[17] As of October 2006, the Trustee Program had received only five formal complaints—out of more than 650,000 credit counseling certificates issued—alleging that providers made harmful or inappropriate recommendations.

Many Question the Value of the Counseling Requirement, but Data on Outcomes Are Limited

The report of the House of Representatives Committee on the Judiciary that accompanied the bill that became the Bankruptcy Act indicated that the purpose of the credit counseling provisions was to ensure that consumers could "make an informed choice about bankruptcy, its alternatives, and consequences."[18] The report further noted that the counseling was intended to give consumers in financial distress "an opportunity to learn about the consequences of bankruptcy—such as the potentially devastating effect it can have on their credit rating" before they decided to file for bankruptcy relief.[19]

However, it is unclear whether the credit counseling requirement is achieving its intended purpose. While quality credit counseling can, in general, be beneficial, a wide range of observers whom we spoke with—including representatives of federal agencies and bankruptcy attorneys; consumer advocates; and several counseling providers—told us that the timing of the counseling conducted to fulfill the requirement of the Bankruptcy Act could mitigate its value. The federal Financial Literacy and

[16] Anecdotal evidence we gathered was corroborated by a survey by the National Foundation for Credit Counseling of its member agencies indicating that about 3 percent of clients who signed up for prefiling counseling from October 2005 through August 2006 enrolled in a debt management plan.

[17] Panel trustees and standing trustees are overseen by the Trustee Program and administer individual Chapter 7 and Chapter 13 bankruptcy cases, respectively.

[18] H.R. Rep. No. 109-31, Part I, at p. 2 (2005).

[19] H.R. Rep. No. 109-31, Part I, at p. 18 (2005).

Education Commission noted in its national strategy that reputable credit counseling could have a significant positive impact, making borrowers more creditworthy and decreasing their debt. But the strategy also recommended that consumers seek credit counseling services early, when financial problems started, in order to avoid potential bankruptcy.[20] In practice, however, by the time individuals obtain prefiling credit counseling, they usually have already consulted with a bankruptcy attorney and have serious financial problems, such as imminent foreclosure on their homes. As such, anecdotal evidence indicates that the great majority of clients receiving prefiling counseling have few viable alternatives to bankruptcy.[21] The Bankruptcy Act's credit counseling requirement therefore may not be serving its purpose of helping consumers make informed choices about whether or not to file for bankruptcy. Providers and others told us that many clients perceived the counseling session as an administrative obstacle rather than a useful exercise.

Questions about the value of the prefiling requirement stem from a widespread belief among observers that nearly all of the consumers that receive the credit counseling subsequently file for bankruptcy. Yet the evidence for this is largely anecdotal, as comprehensive data do not currently exist on the outcomes of those consumers who receive prefiling credit counseling. Neither the Trustee Program, credit counseling providers, or any other party currently tracks how many consumers who receive credit counseling subsequently file for bankruptcy. A Trustee Program official told us that the program had not taken steps to track and monitor these outcomes because doing so was not part of its statutory responsibilities. As we have reported in the past, meaningful data on program outcomes and costs are essential for appropriate oversight and

[20] Financial Literacy and Education Commission, *Taking Ownership of the Future: The National Strategy for Financial Literacy* (Washington, D.C.: April 2006), pp. 31, 32, and 38.

[21] The number of bankruptcy filings increased substantially just prior to the implementation of the Bankruptcy Act because many consumers believed it would be more difficult to receive bankruptcy protection once the act went into effect, according to organizations representing bankruptcy attorneys and other observers we spoke with. Debtors filing for bankruptcy shortly after the implementation of the act may therefore not be representative of future debtors.

decision making.[22] Without reliable data on the outcomes of the prefiling credit counseling sessions, policymakers and program managers lack the information that would allow them to determine how well the statutory requirement is truly serving to inform consumers about their options. In our report, we recommend that the Trustee Program develop a mechanism that would allow the program or other parties to track the outcomes of prefiling credit counseling, including the number of individuals issued counseling certificates who then file for bankruptcy. This may involve working in conjunction with the Administrative Office of the U.S. Courts to ensure that the unique certificate numbers issued by the Trustee Program can be linked to bankruptcy petitions filed with the courts. In commenting on a draft of our report, the Trustee Program said that it concurred with this recommendation and noted that it plans to refine and expand its current tracking and data collection methods, as well as explore the feasibility of developing more comprehensive outcome measures.

Debtor Education Sessions Are Designed to Offer Financial Management Skills

The debtor education requirement is described in the Bankruptcy Act as an "instructional course concerning personal financial management," which may be provided in person, by telephone, or via the Internet.[23] The Trustee Program's interim final rule specified that the course should include written information and instruction on four major topics: budget development, money management, wise use of credit, and consumer information.[24] We reviewed the debtor education curricula, teaching guides, and other materials from 17 debtor education providers, and found that the content included the topics and elements that the Trustee Program required. Trustee Program data collected on certificates issued between July 11 and October 17, 2006, indicated that 50 percent of predischarge education sessions were conducted by Internet, 29 percent via telephone, and 21 percent in person.

[22]For example, see GAO, *Program Evaluation: OMB's PART Reviews Increased Agencies' Attention to Improving Evidence of Program Results*, GAO-06-67 (Washington, D.C.: Oct. 28, 2005); *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, GAO-04-38 (Washington, D.C.: Mar. 10, 2004); and *Managing for Results: Using GPRA to Assist Congressional and Executive Branch Decisionmaking*, GAO/T-GGD-97-43 (Washington, D.C.: Feb. 12, 1997).

[23]See 11 U.S.C. § 111(d)(1)(C).

[24]71 Fed. Reg. at 38082 (to be codified at 28 C.F.R. § 58.25(f)).

Most representatives of consumer groups, bankruptcy attorneys, and other observers we spoke with believed that the predischarge debtor education course was likely to help improve consumers' financial literacy. As we have noted in earlier reports, we believe that ensuring that Americans have the knowledge and skills to manage their money wisely is a key element in improving the economic health of our nation for current and future generations.[25] Financial education efforts that seek to achieve goals such as reducing Americans' debt are key to helping improve our citizens' economic security and our country's economic growth.

Provider Fees Are Generally Considered Reasonable, Although Fee Waiver Policies Vary

The Bankruptcy Act requires that credit counseling and debtor education providers charge reasonable fees for their services and provide these services without regard to the client's ability to pay. Trustee Program staff, providers, and trade association representatives told us that most providers charged around $50 each for their credit counseling and debtor education sessions. This estimate was corroborated by survey data collected from 107 providers by the National Foundation for Credit Counseling.[26] Representatives of consumer groups and legal organizations, as well as academics and others we spoke with, generally believed that the fees credit counseling and debtor education providers had been charging were reasonable.

The Trustee Program has required providers to disclose their fee schedules in their applications, and, as of July 2006, has also required providers to disclose their policies for reducing or waiving fees based on the client's ability to pay.[27] A program official told us that providers' waiver policies are reviewed during the application process to ensure that they are clear and objective, and noted that in some cases applicants had been rejected for inadequate fee waiver policies.

[25]For example, see GAO, *Financial Literacy and Education Commission: Further Progress Needed to Ensure an Effective National Strategy*, GAO-07-100 (Washington, D.C.: Dec. 4, 2006) and *Highlights of a GAO Forum: The Federal Government's Role in Improving Financial Literacy*, GAO-05-93SP (Washington, D.C.: Nov. 15, 2004).

[26]National Foundation for Credit Counseling, *Consumer Counseling and Education Under BAPCPA: Year One Report* (Silver Spring, Md.: Oct. 16, 2006). This report provided data on the agencies' average revenue per session, which factored in cases where fees were reduced or waived. However, the foundation provided us with the underlying data from its survey, which we used to determine the average price charged to consumers who did not have their fees reduced or waived.

[27]71 Fed. Reg. at 38078-79 and 38082-83 (to be codified at 28 C.F.R. §§ 58.15(c) and 58.25(j)).

Providers' policies for waiving fees varied. For example, the three largest providers used differing criteria—one told us it waived fees for clients at or below 150 percent of the poverty line, a second for clients at or below 120 percent of the poverty line, and a third based on whether the client received free legal aid or had disability income. Providers we spoke with generally said that they allowed counselors to use their discretion to waive fees in additional circumstances as well. According to Trustee Program data, the three largest providers waived their fees 4 percent, 15 percent, and 26 percent of the time for credit counseling sessions, and 6 percent, 21 percent, and 34 percent of the time for debtor education courses.

The Bankruptcy Act does not specify what constitutes a client's "ability to pay." In addition, the Trustee Program has not issued formal guidance on determining a client's ability to pay. Some providers told us that the lack of guidance left them unsure about the criteria they should use and said that additional guidance would be beneficial. Eight of the 22 comments to the Trustee Program's interim final rule submitted by providers, industry associations, and consumer groups requested that the program provide guidance or clarification on what constitutes a client's ability to pay. Trustee Program officials told us that they were considering issuing a rule that would formalize the criteria that providers should use to determine clients' ability to pay but that they had not made a final decision.

We believe that clearer guidance on determining clients' ability to pay could have several benefits, including reducing uncertainty among providers, providing greater transparency, and ensuring compliance with minimum standards. As such, our report recommends that the Trustee Program issue formal guidance on what constitutes ability to pay. In developing this guidance, the program should examine the reasons behind the variations among providers in waiving fees. In addition, while this guidance should set a minimum benchmark for determining when fees should be reduced or waived, it should not limit or discourage providers that may wish to waive fees for more clients than qualify under the minimum benchmark. In its comment letter, the Trustee Program agreed with our recommendation and said it will promulgate formal fee waiver guidance in a rulemaking later this year.

The Supply of Providers Appears Sufficient, and Actions Are Under Way to Address the Challenges Some Consumers May Face Fulfilling the Requirements

Before the Bankruptcy Act went into effect, some members of Congress, consumer advocates, and others worried that not enough counseling services would be available within the required time frame for people filing for bankruptcy. Our review of the limited data available and anecdotal evidence indicated that the supply of credit counseling and debtor education services has been adequate to meet the demand for these services. When the Bankruptcy Act went into effect in October 2005, the Trustee Program had approved 71 credit counseling and 76 debtor education providers. By October 2006, this number had risen to 153 credit counseling and 268 debtor education providers, including about a dozen that provide services nationwide. A wide range of participants in the bankruptcy process—including bankruptcy attorneys, a bankruptcy court representative, and service providers—told us that getting access to these services in a timely manner had generally not been a barrier to filing or receiving discharge of debts. Additionally, some noted that consumers who called to schedule a credit counseling or debtor education session were usually accommodated within 24 hours, and sometimes much sooner.

An analysis of existing data suggests that in-person counseling and education sessions are accessible to most of those who need them—particularly in metropolitan areas—but are not easily accessible in certain portions of the country. However, this concern is somewhat mitigated by the fact that the great majority of clients appear to prefer telephone or Internet counseling. Among participants in the process with whom we spoke, the consensus was that debtors sought to conduct the counseling and education sessions by telephone or Internet because these were the quickest and most convenient methods for satisfying the statutory requirements.

Some policymakers, consumer advocates, and others have expressed concern that the credit counseling requirement may create hardship for some debtors by delaying their ability to file a bankruptcy petition and receive the automatic stay that prohibits creditors from continuing to seek payment. This stay can be very important to some debtors—for example, those facing foreclosure on their homes. Some potential bankruptcy filers may face certain challenges in accessing credit counseling and debtor education. For example, consumer and language access advocates, as well as representatives of bankruptcy attorneys, told us they were concerned about the ability of some non-English speakers to receive counseling and education services in their native languages in a timely and effective manner. The Trustee Program has ongoing and planned measures in place to allow consumers to better identify language and translation services offered by providers. The program's Web site now allows users to identify providers offering services in any one of at least 29 languages. A program official told us that eventually the Web site should allow consumers to search, by provider and location, for all languages and translation services offered.

Finally, in some cases, individuals who were not represented by an attorney have reportedly attempted to file bankruptcy petitions without having met the prefiling credit counseling requirement. To help mitigate this issue, the uniform set of Official Bankruptcy Forms used by the courts was modified to include a separate exhibit that petitioners attach to attest to compliance with the requirement. Further, the bankruptcy courts have sought to make the requirement more prominent on their Web sites.

Madam Chairwoman, this completes my prepared statement. I would be happy to respond to any questions you or other members of the Subcommittee may have at this time.

Contacts and Acknowledgments

For further information on this testimony, please contact Yvonne D. Jones at (202) 512-8678. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony include Jason Bromberg, Anne A. Cangi, Emily R. Chalmers, Carl M. Ramirez, and Omyra Ramsingh.

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Ms. SÁNCHEZ. Thank you, Ms. Jones, for your testimony.

Before we begin the first round of questions there are several documents that I would ask be admitted into the record without objection. I would like to submit the National Association of Bankruptcy Trustees' statement of President Eugene Crane on the Second Anniversary of the Bankruptcy Abuse and Consumer Protection Act.

[The prepared statement of Mr. Crane follows:]

PREPARED STATEMENT OF EUGENE CRANE, PRESIDENT, NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES

Madam Chair Sánchez, Ranking Member Cannon, and other distinguished Members of the Subcommittee, let me thank you for the opportunity to provide the views of our Association to your Subcommittee on this very important subject.

The National Association of Bankruptcy Trustees (NABT) is an organization of panel trustees, independent fiduciaries appointed in every chapter 7 bankruptcy case. Of the approximate 1,200 such Trustees nationwide, the vast majority are members of the organization. Our organization carries out the major work involved in the bankruptcy system, handling thousands upon thousands of cases each year. We protect both debtors and creditors from abuse of the system.

We carry out important public policy priorities as directed by the Congress, such as insuring that child support orders are enforced, safeguarding patient health care needs and records, and protecting pensions obligations. We help local, state and federal governments by being one of the largest collectors of back taxes in the U.S.

In most chapter 7 cases, the Debtors never appear before a judge, but are examined by the Trustees beginning with a review of the petitions filed, and a hearing conducted by the Trustees to which creditors may appear and participate. Many functions and required performance duties are contained in the Bankruptcy Act and Bankruptcy Rules and the Office of the United States Trustee (U.S.T.) Acts to oversee the carrying out of such duties. The U.S.T. is a part of the Justice Department.

The activities carried out are mandated by many provisions of the law, rules and regulations, and are necessary and crucial to the operation of bankruptcy. The Bankruptcy Abuse and Consumer Protection Act , (the "ACT") effective October 2005, added many new and different duties to the Trustee. Trustees have an obligation to secure relief for honest but unfortunate debtors and to investigate filings for abuse, wrongdoing and improper filings as well as to protect the interests of all parties to a proceeding and, pursue and reduce to cash all assets available to insure an equitable distribution of assets.

The NABT is committed to maintaining the effectiveness and fairness of the system and to that end we believe there are several areas of the law that Congress may want to look at with an eye toward implementation, in appropriate instances, to allow trustees to effectively perform their duties and achieve the intended legislative purposes. Most importantly, adequate compensation will be needed to insure continued operation by Trustees.

As with many complex and detailed new laws, some untested provisions proved to be contradictory, burdensome and in some instances, difficult or too elaborate to perform. NABT urges Congress to promptly address and remedy the ACT's defects and unforeseen consequences.

Let me discuss a few key aspects of the law and other key issues related to the bankruptcy system.

ACT PROVISIONS

1. Notification of Child Support Claimants

Sec. 704(a)(10) of the ACT imposes a new notice requirement mandating service of notices at filing and at discharge to all agencies and persons to whom a support obligation is due. NABT is at work developing methods to implement the new § 704(a)(10), through which child support claimants will be notified of their rights as creditors in Chapter 7 classes of Debtors from whom a support obligation is due. We envision that this provision will, with the cooperation of the EQUST, be effectively implemented through a series of procedures and notices provided by the panel Trustee throughout the case. We believe that, through this process, claimants owed domestic support obligations can and will be made aware of the options available to them to enforce Court-ordered support.

2. Additional Information Required of Debtors

NABT believes that the additional information which is required to be furnished to the Trustee (and others), prior to the first meeting of creditors, will aid in the identification and liquidation of assets for the benefit of creditors. We are actively working on methods of delivery which allow us to effectively utilize the volume of information which will be provided to us by each Debtor. Additionally, we will attempt to insure that this information will remain confidential, and be used solely for the purposes intended by the statute.

Review of this required information will serve to insure that all assets are disclosed and, where appropriate, applied to the payment of creditors' claims. It will also, in many cases, more adequately define the Debtors' circumstances, which will allow the panel Trustee to perform the job more effectively.

3. Waiver of Filing Fee

The amended 28 U.S.C. § 1930 (f) (1) provides for the waiver of Chapter 7 case filing fees for individuals with "income less than 150 percent of the income official poverty line" if the Court determines the individual is unable to pay the fee in installments. Trustees are paid compensation of $60 for administering cases in which no assets are available for liquidation. The funding for these fees is derived from the Chapter 7 case filing fee [see 11 U.S.C. § 330(b)(1)j and Miscellaneous Bankruptcy Court Fees prescribed by the Judicial Conference of the United States [see 11 U.S.C. § 330(b)(2)].

There is no provision in the ACT for payment to Trustees where the filing fees are waived. A statistical survey shows that the number of informa pauperis cases where filing fees are waived ranges as high as 9.78% in some jurisdictions. Trustees are now faced with a reduction in compensation for their work in administering those cases. This apparent oversight needs to be corrected and a system established to provide adequate funding for payment of Trustee fees in these cases.

4. Protecting Patient Records

The ACT adds a new § 351 to the Code that provides a procedure for notification and disposal of patient records in cases where the Trustee does not have sufficient funds to pay for the storage of records in the manner required under applicable federal or state laws. The ACT fails to take into account that in some circumstances Trustees will lack sufficient funds to comply with the procedure established under § 351. For example, under § 351 Trustees are required to undertake various costly actions including: storing records for one year; publishing a notice in one or more appropriate newspapers; notifying every patient and appropriate insurance carrier by mail; communicating by certified mail with each appropriate federal agency; and destroying the records, It is estimated that these costs could range anywhere from $3,500.00 in smaller cases (500 or fewer patients) to $35,000.00 in medium cases (10,000 patients) and higher in large cases (up to 100,000 patients and more). If Trustees do not have the funds to pay for the storage and notices required in § 351, patient records may not be administered properly and could be lost.

The problem can be corrected by allowing a court in no asset or limited asset cases, upon motion of the Trustee, to direct the person or persons responsible for maintaining, storing or disposing of patient records under state law, prior to the appointment of the Trustee, to resume the responsibility of preserving the records. In such circumstances, the responsible party would be directed, by court order, to perform the functions required under § 351.

5. Payment in Converted Cases

The ACT was intended to provide a mechanism and payment schedule for Chapter 7 Trustees to receive compensation in cases converted or dismissed pursuant to 707(b). The ACT included changes to § 1326(b) of the Code specifying the payment schedule to be applied if Trustees are allowed compensation due to the conversion or dismissal of case under § 707(b). These changes are inadvertently ineffective, however, unless § 326 of the Code is also modified to provide for Trustee compensation in converted or dismissed cases. Under current judicial interpretations of § 326, Trustees have been denied compensation in cases converted or dismissed under § 707(b) because Trustees have not actually disbursed or turned over monies to parties in interest in such cases (which that statute requires as a prerequisite).

The problem can be corrected by adding a new subsection (e) to § 326 to provide that the Court may allow reasonable compensation for services rendered by the Trustee, if the Debtor in a Chapter 7 case commences a motion to dismiss or convert and such motion is granted, or if the case is converted from Chapter 7 to another chapter, and the actions or positions of the Chapter 7 Trustee were a factor in the conversion of the case. Since cases are most often converted from Chapter 7 to 13 without the processing of a formal § 707(b) motion (a threat of a motion is often sufficient), Trustees should be allowed compensation if their actions or positions were a factor in the conversion of the case (i.e., discovery of undisclosed or undervalued assets).

Trustees have and will continue to direct those Debtors who have an ability to repay some or all of their debts into a Chapter 13 repayment plan. It was the intent of Congress to reward us for these efforts, and encourage our continued vigilance.

6. Avoiding Automatic Dismissal in Asset Cases

The ACT modifies § 521 of the Code to compel an automatic dismissal of cases where certain information is not timely provided. If a Debtor does not reaffirm or surrender collateral within 45 days after the first meeting of creditors, the automatic stay under § 362(a) is terminated and the property "shall no longer be property of the estate," even if there is equity in that property for the benefit of the estate.

The automatic dismissal language raises concerns insofar as it renders valuable property "no longer property of the estate" and places it beyond the reach of the Trustee or the court. Trustees may not be able to determine whether there are unencumbered non-exempt assets to administer by the deadlines imposed under § 521, in part, because debtors who are dilatory in reaffirming/surrendering are often unresponsive to trustees. Although trustees may ask for extensions of the § 521 deadlines, circumstances may prevent the trustee from having sufficient information to support a motion for an extension of time.

7. Increase in "No Asset" Fee

Under the present law, Trustees receive $60 for administering Chapter 7 cases in which "no assets" are liquidated. The last increase in this Trustee compensation occurred in 1994, when the fee was raised from $45 to $60.

The ACT imposes new, and more duties on Chapter 7 Trustees. There are significantly more documents to review, notification of specific classes of creditors (child support claimants), a higher degree of scrutiny of the true economic status of individual Debtors (review of income tax returns and payment advices prior to conducting a Section 341 meeting of creditors), and more statistical reporting in order to allow a monitoring of the effectiveness of the system.

NABT is actively involved in educating Trustees as to implementation of the ACT and fulfillment of these new requirements. It is the statutory duty of Chapter 7 Trustees to acclimate themselves to the new system, so that they can continue to properly administer bankruptcy cases.

Sixty dollars (the fee for the last 12 years) is not fair and adequate compensation to administer a bankruptcy case. Our Association strongly believes that an increase in this fee, even if it is moderately less than the $40 per case increase Congress passed last year, is in order. Without a fee increase, many young attorneys will choose not to become Trustees. This will make the system slower, more cumbersome and less efficient for all parties involved, both debtors and creditors. There has been bipartisan support for raising Trustee compensation for no asset cases. We again urge the Congress to act on this increase without delay. We would also request that any increase be subject to a consumer price index adjustments so that are fees are not frozen as they have been for the past 12 years.

8. Percentage Compensation in Cases with Assets

Section 326 needs to be amended to address and provide for increased percentage applications, particularly to small asset cases, if not to all asset cases. Trustees are not paid on surplus distribution to debtors, but only on "all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor. . . ." The section should be amended to increase the percentage applications extending the 25% on the first $5,000 to the first $25,000, with commensurate adjustments thereafter. An increase in this category would offset the small fee compensation we receive per case. Additionally, creditors and the public benefit if trustees are adequately incentivized to locate assets that might be hidden from the bankruptcy court.

As we mentioned above, the figures in Sec. 326 should also be subject to consumer price index adjustments every three years, like other parts of the bankruptcy code. We know the Act provides for increases automatically for chapter 13 trustees (5 U.S.C. 5303); debtors' exemptions (11 U.S.C. 522); involuntary case qualifying amounts; chapter 13 qualifying amounts; preference actions; and many more, but there is no increase for trustees.

This concludes my statement. NABT looks forward to working with you during this Congress, particularly on the compensation issue which affects our members ability to carry out this Act.

Thank you.

Ms. SÁNCHEZ. Also, a document from the American Bar Association with respect to the subject of today's hearing, "Are Consumers Really Being Protected Under the Act?"

[The information referred to follows:]

LETTER AND SUPPORTING DOCUMENTS FROM THE AMERICAN BAR ASSOCIATION, SUBMITTED BY THE HONORABLE LINDA SÁNCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

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May 1, 2007

The Honorable Linda T. Sanchez
Chair
Subcommittee on Commercial
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Chris Cannon
Ranking Member
Subcommittee on Commercial
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: Hearing on "The Second Anniversary of the Enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act [P.L. 109-8]: Are Consumers Really Being Protected Under the Act?", Scheduled for May 1, 2007

Dear Chairwoman Sanchez and Ranking Member Cannon:

On behalf of the American Bar Association ("ABA") and its more than 415,000 members, I write to express our views concerning the subject of your Subcommittee's hearing on "The Second Anniversary of the Enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act [P.L. 109-8]: Are Consumers Really Being Protected Under the Act?" We ask that this letter be included in the official record of today's hearing.

Although the ABA supports several narrow provisions in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Act") that allow direct appeals of final bankruptcy orders to the courts of appeals and permit bankruptcy attorneys to pay referral fees to nonprofit attorney referral programs, the ABA strongly opposes three other provisions in the new law, explained more fully below, that dramatically increase the liability and administrative burdens of bankruptcy attorneys while denying effective legal representation to many Americans. Accordingly, the ABA has prepared a draft "technical corrections" bill that would reverse these provisions in the new law, and we encourage the Subcommittee to support this or similar legislation. We also urge the Subcommittee to support legislation that would add a partnership bankruptcy structure to the existing Bankruptcy Code.

Direct Appeals of Bankruptcy Court Orders

The ABA strongly supports Section 1233 of the Act, titled "Direct Appeals of Bankruptcy Matters to Courts of Appeals." That section, codified at 28 U.S.C. § 158, reflects a compromise reached between representatives of the ABA and the Judicial Conference of the United States and established a procedure that allows parties to appeal certain bankruptcy court decisions, judgments, orders and decrees directly to the circuit courts of appeals by means of a two-step certification and authorization process. The first step is a certification by the bankruptcy court, district court, or bankruptcy appellate panel, acting on its own motion or the request of a party, or all of the appellants and appellees acting jointly. The provision requires the lower court to certify the direct appeal if (i) the bankruptcy court, district court, or bankruptcy appellate panel determines that one or more of the standards are met or (ii) a majority of the appellants and a majority of the appellees request certification and represent that one or more of the standards are met. The provision also authorizes all of the appellants and appellees acting jointly to certify a direct appeal. Once a direct appeal has been certified by the lower court, the second step is authorization by the circuit court of appeals. Under this second step, while the court of appeals is given discretion whether to accept the direct appeal, the ABA understood at the time that direct appeals would be liberally granted once they were certified. Jurisdiction for the direct appeal will exist only in those cases in which the court of appeals chooses to authorize it.

The ABA believes that the direct appeals system created by Section 1233 is a clear improvement over the previous system of bankruptcy appeals. Under the earlier system, a bankruptcy order—unlike other federal trial court orders—was subject to an additional level of review: the appeal *first* had to go to either a district court or a bankruptcy appellate panel ("BAP") *before* the appeal could go to a circuit court. The two-level bankruptcy appellate process was extremely unusual. In our view, the multi-tiered bankruptcy appellate structure worked poorly and imposed unnecessary delays and costs on all parties. In addition, as stated in the Judicial Conference's 1995 Long Range Plan for the Federal Courts: "Under…[the previous] practice, district courts and BAP decisions are not treated as stare decisis in other cases—resulting in a 'patchwork' of differing legal interpretations that encourage forum shopping and undermine the national system of [a uniform] bankruptcy law." (p. 48) For these and other reasons, the bipartisan National Bankruptcy Review Commission voted unanimously in 1997 to support a direct appeals system.

Although the Act has not been in force long enough to generate conclusive data as to the effects of the direct appeals provision, the ABA believes that over time, the new system—which parallels the track of civil appeals much more closely than the earlier bankruptcy appellate system—will result in:

- Faster final decisions;
- Greater certainty, uniform interpretation, and decisions of precedential value with respect to key bankruptcy issues; and
- Reduction in unnecessary bankruptcy litigation.

Ultimately, the ABA believes that the direct appeals system created by the Act will aid in achieving the important goal of reducing the time and costs associated with the bankruptcy process and will also assist in harmonizing bankruptcy laws and non-bankruptcy laws generally.

Sharing Fees with Nonprofit Attorney Referral Programs

The ABA also supports Section 326 of the Act, titled "Sharing of Compensation," which amended Section 504 of the Bankruptcy Code to allow bankruptcy attorneys to pay referral fees to bona fide public service attorney referral programs. *See* 11 U.S.C. § 504. These nonprofit attorney referral programs, many of which are affiliated with state and local bars around the country, provide a valuable and highly visible service to the community by serving two critical functions: providing information to consumers about their legal concerns and, if appropriate, making a referral to an attorney who is capable of providing appropriate legal services to the consumer. Most of these referral programs in the U.S. support their operations by charging a percentage fee to each attorney who receives a case from the service, and this system has been very effective in the roughly 34 states that currently utilize this system.

Prior to the passage of the Act, the language of Section 504 of the Bankruptcy Code inadvertently prohibited bankruptcy attorneys from sharing their fees with these nonprofit lawyer referral programs. In particular, previous Section 504 of the Code prohibited fee-splitting arrangements except where (1) a person is a partner or otherwise associated with an individual compensated from an estate or (2) an estate-compensated attorney for a creditor who filed an involuntary case under Section 303 is assisted by another attorney. But this prohibition was similar to the general fee splitting prohibition applicable to all other types of lawyers contained in the ABA Model Rules of Professional Conduct, for which an exception had been made specifically for public service lawyer referral programs. By eliminating this irrational distinction between bankruptcy and non-bankruptcy lawyers and allowing the former to pay referral fees to nonprofit attorney referral programs, Section 326 of the Act has made a substantial contribution to the financial health of these nonprofit referral programs. As a result, this provision in the Code has benefited—and will continue to benefit—many thousands of consumers around the nation every year.

Bankruptcy Attorney Liability Provisions

The ABA and over 25 state and local bars throughout the country strongly oppose those provisions in the new law that require debtor bankruptcy attorneys to: (1) certify the accuracy of the debtor's bankruptcy schedules, under penalty of harsh court sanctions [*see* Section 102, codified at 11 U.S.C. § 707(b), *et al.*, and Section 319]; (2) certify the ability of the debtor to make future payments under reaffirmation agreements [*see* Section 203(a), codified at 11 U.S.C. § 524]; and (3) identify and advertise themselves as "debt relief agencies" subject to a host of new intrusive regulations that interfere with the confidential attorney-client relationship [*see* Sections 227-229, codified at 11 U.S.C. §§ 526-528]. The ABA believes that these attorney liability provisions in the Act, discussed in greater detail below, have been highly detrimental to the nation's bankruptcy system and should be repealed.

(1) Certification of Bankruptcy Schedules and Related Attorney Sanctions

The ABA strongly opposes the language in Sections 102 and 319 of the Act that requires the debtor's attorney to certify the accuracy of all factual allegations in the debtor's schedules of assets and liabilities and subjects the attorney to harsh court sanctions if any factual inaccuracies result in the dismissal of the debtor's Chapter 7 bankruptcy petition or in its conversion to a Chapter 13.

During House-Senate conference committee negotiations in 2002 on a previous version of the legislation (i.e., H.R. 333), the provision requiring the court to impose sanctions against attorneys for inaccurate bankruptcy schedules was replaced with a discretionary standard. Although that change was a significant improvement, the final language contained in Sections 102 and 319 of the Act still has had a significant negative impact on bankruptcy attorneys, debtors, and the bankruptcy system.

Prior to enactment of Sections 102 and 319, the debtors themselves were solely responsible for the accuracy of the schedules they filed with the bankruptcy court, and they were required to sign and certify these schedules under penalty of perjury. If the debtor filed false schedules, he or she was subject to strict sanctions and criminal penalties, including stiff fines and up to five years in prison. In addition, Bankruptcy Rule 9011 required both debtor and creditor bankruptcy attorneys, like all other attorneys appearing in federal courts, to certify that pleadings and other items that they prepare are supported by the facts before they are filed with the court. This rule, which was identical in form and substance to Federal Rule of Civil Procedure 11, applied to all pleadings and motions filed with the bankruptcy court. By its own terms, however, Rule 9011 did not apply to the bankruptcy schedules listing the debtor's financial information. Because those schedules are prepared almost entirely with information supplied directly by the debtor, Rule 9011 allowed bankruptcy attorneys to rely in good faith upon the accuracy of this information provided by the client. Therefore, the debtor alone was held responsible for the truthfulness and accuracy of the schedules.

Sections 102 and 319 of the Act changed existing law by creating a new and higher standard for debtor bankruptcy attorneys that goes well beyond the standards imposed upon other attorneys. By creating new subsections 4(A) – (D) to 11 U.S.C. § 707(b) and modifying Rule 9011, Sections 102 and 319 for the first time began to hold the debtor's attorney—instead of the debtor—financially responsible for any factual errors contained in the debtor's bankruptcy schedules. Therefore, if even innocent errors in the schedules result in the dismissal of the petition or in its conversion to a Chapter 13 proceeding, the debtor's attorney now can be held financially responsible unless it is proven that the attorney conducted a time-consuming and costly investigation of these factual allegations before the filing.

In addition, while previous Bankruptcy Rule 9011 held all bankruptcy attorneys to the same standards, Sections 102 and 319 of the Act unfairly discriminate between debtor and creditor attorneys. These sections provide that if the debtor's schedules are found to violate Rule 9011 and the debtor is denied a discharge under the means test outlined in the Act, the debtor's attorney will be subject to harsh court sanctions and could be held personally liable for the attorneys' fees of the trustee or bankruptcy administrator who contested the discharge, as well as civil penalties. Because malpractice carriers have indicated they will exclude this new liability from coverage under their policies or charge substantially higher rates and/or deductibles, the debtor attorney's exposure will be even greater. In contrast, attorneys representing creditors were not required to certify the accuracy of their clients' factual information and were not subjected to any comparable new sanctions under the new law.

The new standards outlined in Sections 102 and 319 of the Act also have fundamentally altered the attorney-client relationship in bankruptcy cases. It has transformed the attorney from an advocate to a detective and informer. The legislation created an unwaivable conflict of interest because the attorney is unable to accept information provided by the client at face value without risking liability if the information later proves to be inaccurate. Further, the debtor's attorney now is required to independently verify the client's factual representations.

Requiring the debtor's attorney to verify all of the client's representations has raised significantly the cost to the debtor of filing for bankruptcy. As a result of the new obligations and liability imposed on attorneys by Sections 102 and 319, many bankruptcy lawyers will no longer agree to accept debtors' cases because they are not willing to become their client's insurer. In addition, those bankruptcy lawyers who continue to represent debtors now are forced to charge substantially higher fees (which many debtors are unable to afford). Therefore, the practical effect of these provisions has been to deny many debtors timely, effective, and affordable representation just when they need it most. For all of these reasons, the ABA believes that Section 319 and new subsections 4(A), (B), and (D) contained in Section 102 are counterproductive and should be repealed.

(2) *Certification of Reaffirmation Agreements*

The ABA also opposes those provisions in Section 203(a) of the Act that require attorneys to certify the debtor's ability to make future payments under reaffirmation agreements.

Under previous law, a debtor was not required to accept the discharge of all outstanding debt. Instead, the debtor could choose to reaffirm certain debts—and retain liability for these debts—if the attorney certified that the decision was voluntary and would not create undue hardship for the debtor or the debtor's dependants. Section 203(a) changes these procedures by again imposing new burdens on the debtor's attorney. Unlike the previous law, which simply required the debtor's attorney to certify in writing that the reaffirmation agreement was voluntary and would not cause the debtor undue hardship, the new provisions require the attorney to certify that "the debtor is able to make the [reaffirmation] payment," in cases where there is a presumption of undue hardship under the debtor's budget (i.e., if the debtor's monthly income is less than monthly expenses, including the reaffirmation payments).

Bankruptcy attorneys are not accountants and are neither trained nor equipped to conduct extensive audits of their clients' finances, nor do they make financial or household budgeting decisions for their clients. Indeed, this is not the attorney's proper role, and any attempt to force the attorney to assume these duties will substantially increase the cost of representing a debtor in bankruptcy. Therefore, this certification requirement, like the certification requirement in Sections 102 and 319, has discouraged many attorneys from representing debtors, while forcing the remaining debtors' attorneys to charge higher fees to cover the substantial additional costs and risk.

The new certification requirement contained in Section 203(a) of the Act also creates strong conflicts of interest between the debtor and the attorney in those instances when the debtor wants to reaffirm a debt and instructs the attorney to certify the debtor's ability to make payments. If the attorney follows the client's directive, the attorney may become subject to sanctions under Bankruptcy Rule 9011—or to a lawsuit by the creditor—if the debtor later proves unable to pay the reaffirmed debt. This new mandate is particularly unfair because creditor's attorneys are not subject to sanctions under Rule 9011 for their clients' false disclosures or illegal collection practices even if they acted in bad faith for vexatious purposes. For all of these reasons, the ABA believes that the provisions in Section 203(a) requiring debtors' attorneys to certify their clients' ability to make reaffirmation payments are inappropriate and should be repealed.

(3) *"Debt Relief Agency" Provisions*

The ABA also strongly opposes those provisions in Sections 227-229 of the Act that require bankruptcy attorneys to identify and advertise themselves as "debt relief agencies" and then comply with a host of new intrusive and burdensome regulations. These provisions confuse the public, seriously interfere with the attorney-client relationship, and impose unfair additional burdens and liability on debtors' attorneys that constitute an unjustified government invasion of the relationship between private attorneys and their clients.

Under these provisions, any "person"—including both bankruptcy attorneys and non-attorney "bankruptcy petition preparers"—who assists individual debtors with their bankruptcies in return for compensation is deemed to be a "debt relief agency." Unfortunately, the provisions fail to take into account any of the important differences between attorneys and non-attorneys providing bankruptcy services. Under current law, only attorneys are permitted to give legal advice, file pleadings, or represent debtors in bankruptcy hearings. In addition, unlike non-attorney bankruptcy petition preparers, only attorneys are licensed by the state in which they practice, bound by canons of ethics, and subject to discipline by the courts in which they practice. More importantly, only those communications between the debtor and his or her attorney are protected by the attorney-client privilege. Requiring both attorneys and non-attorney bankruptcy petition preparers to advertise themselves as "debt relief agencies" obscures these important distinctions while creating substantial confusion among the public.

The "debt relief agency" provisions in the Act also interfere with the attorney-client relationship in a variety of ways. Because the definition is worded so broadly, it may be construed to apply not just to bankruptcy attorneys, but also to family attorneys, tax attorneys, criminal and civil defense attorneys, and general practitioners who, in the course of representing their clients, are compelled to advise them to consider filing bankruptcy to protect their rights. This jeopardizes the attorney's ability to properly advise his or her client regarding their legal rights.

Any attorney who assists a client with bankruptcy is subject to a long list of new regulations under the new law. In particular, such attorneys now are required to provide lengthy written disclosure statements to potential and existing bankruptcy clients that explain the bankruptcy system and provide general, government-approved legal advice. In addition, attorneys now are required to advise the debtor in writing that the debtor need not be represented by a lawyer in the bankruptcy or in related litigation, which in many cases is bad advice.

By requiring that the debtor's attorney provide the debtor with preprinted, government-approved legal advice on bankruptcy law, and by forcing the attorney to state in writing that the debtor need not even retain a lawyer, the Act usurps the attorney's role as the proper legal representative of the debtor. Perhaps even more troubling, the Act also prohibits the attorney from giving certain proper pre-bankruptcy planning advice to the client, including advice to pay certain lawful obligations or to incur certain debts. In fact, these provisions are worded so broadly that the attorney could be subject to liability merely for making an unsuccessful attempt to help the client restructure the debt to avoid bankruptcy. These provisions, which dictate the types and content of legal advice that an attorney can and cannot render to his client, are particularly destructive of the attorney-client relationship.

Sections 227-229 also require attorneys to provide the debtor with a written contract, and if the contract fails to comply with each of the detailed requirements outlined in the Act, it could become void and unenforceable. Furthermore, if the debtor's attorney fails to follow any of the many technical requirements of the Act, the attorney could forfeit the entire fee and could be sued in state or federal court by the debtor, the trustee, or state law enforcement officials for actual damages, civil penalties, attorneys' fees, and costs. Although pre-existing law and ethical rules already required all attorneys to provide quality legal representation to their clients, Sections 227-229 go well beyond those general standards and unfairly subject just one type of attorney—debtors' bankruptcy attorneys—to a far stricter standard than attorneys in any other field of practice.

In addition, Section 229 also seeks to micromanage the bankruptcy attorney's advertising by requiring the attorney to include a conspicuous—and awkward—statement in all its advertising stating that "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." No such requirements apply to creditors' attorneys under the Act. These new advertising regulations could conflict with the well-established advertising rules that have already been established by many state supreme courts and state bars and will confuse the public. In addition, requiring attorneys to label themselves as "debt relief agencies" will discourage general practitioners and bankruptcy professionals who have a consumer and business, debtor and creditor practice from advertising the availability of bankruptcy services, thus limiting consumer bankruptcy representation to attorneys with narrower practices. For all of these reasons, the ABA believes that the Act should be amended to exempt attorneys—who are already heavily regulated by their respective state courts, state bars, and federal courts—from the coverage of the "debt relief agency" provisions contained in Sections 227-229.

In recent months, the constitutionality of certain "debt relief agency" provisions in the Act has been called into serious question by the federal courts. Several different U.S. District Courts have held that as a matter of law, the portion of the debt relief agency provisions in the new statute prohibiting the rendering of certain legal advice violates the attorney's First Amendment rights. *See Susan B. Hersch v. United States*, 347 B.R. 19 (N.D. Tex. 2006) and *Olsen v. Gonzales*, 350 B.R. 906 (D. Or. 2006). In addition, a number of courts have held that the term "debt relief agency" does not apply to licensed attorneys, but that if it did apply, it would violate the attorneys' First Amendment rights. S*ee, e.g., Milavetz, Gallop & Milavetz P.A. v. United States*, 355 B.R. 758 (Minn. 2006); and *In Re Reyes*, 2007 WL 136934 (Bankr. S.D. Fla.). Meanwhile, on May 11, 2006, the Connecticut Bar Association and the National Association of Consumer Bankruptcy Attorneys filed suit in U.S. District Court in Connecticut challenging the constitutionality of the Act's debt relief agency provisions. See *Connecticut Bar Association v. United States*, No. 3:06-cv-00729 (D. Conn.) The suit seeks a preliminary injunction prohibiting application of these provisions to attorneys, but the court has not yet set a hearing date.

All three attorney liability provisions outlined above, taken together, have been highly detrimental to the nation's bankruptcy system and substantially reduced the availability of *pro bono* legal representation. These provisions have discouraged many attorneys from agreeing to represent debtors at all and are making bankruptcy representation unaffordable for countless numbers of Americans. In addition, these provisions already have discouraged many attorneys from providing essential *pro bono* bankruptcy services to the nation's poor. Indeed, since the Act became law, many large law firms that previously encouraged its lawyers to provide *pro bono* bankruptcy representation to the poor are now instructing their lawyers that because of the new attorney-liability provisions in the Act, they may not accept any more such cases. With fewer attorneys available to represent debtors, many more debtors have been forced to file their bankruptcies *pro se*, without first obtaining adequate advice regarding the necessity or advisability of filing for bankruptcy. Unless these provisions are remedied, they will continue to have an adverse effect on debtors, creditors, and the bankruptcy system as a whole.

The ABA has prepared a draft "technical corrections" bankruptcy bill that would correct the problems created by the bankruptcy attorney liability provisions in P.L. 109-8, and the text of the draft bill is attached as Appendix A. Instead of unfairly punishing attorneys who provide legal services to debtors in bankruptcy, the draft bill would replace the harmful attorney liability provisions in P.L. 109-8 with new language instructing the courts to more vigorously enforce existing Bankruptcy Rule 9011 when misconduct by any attorney or party in the case is shown. The draft bill also would amend the definition of "debt relief agency" in the Act to exclude attorneys (who are already licensed and heavily regulated by their state supreme courts, state bars, and federal courts) while leaving these new regulations in the bill in place for the non-attorney bankruptcy petition preparers (who are now largely unregulated). The draft bill would reduce fraud and abuse in a far more effective an equitable manner, and we urge all members of the Subcommittee to support this or similar legislation.

Partnerships in Bankruptcy

The ABA also believes that the Bankruptcy Code could be further improved by enacting legislation that would add a partnership bankruptcy structure to the Code.

Partnerships are a popular vehicle for doing business. Partnerships include the two person small business, the single asset real estate venture, and the large professional service firm. By its nature, the general partnership does not afford limited liability to its members. Rather, the liability of general partners for partnership debt is determined by state law and the partnership agreement. Consequently, the determination and enforcement of liability for the debts of an insolvent partnership involves a multitude of difficult and seemingly unanswerable questions.

The complexities of the intersection between partnership and insolvency laws have defied resolution. The result is that currently only one provision of the Bankruptcy Code—11 U.S.C. § 723—addresses a partnership bankruptcy. This section authorizes the trustee of a partnership in a Chapter 7 liquidation to claim and collect a deficiency of the partnership estate from a general partner and does not apply to Chapter 11 reorganizations.

In 1996, the ABA adopted policy recommending that Congress enact legislation providing for the administration and resolution of partnership cases under the Bankruptcy Code. The proposed amendments to the Bankruptcy Code, and the ABA resolution endorsing these amendments, are attached as Appendix B.

The estate of many partnerships, especially professional or service partnerships, can be preserved only by the Chapter 11 process. This fact has been exemplified by a number of bankruptcies involving insolvent professional partnerships, all of which involve remarkably similar facts.[1] Each involved either a large law or accounting firm which sought Chapter 11 bankruptcy relief to wind up its affairs. In each case, the bankruptcy court was forced to formulate a remedy that would encourage voluntary contribution by general partners to maximize the distribution of property of the state and simultaneously avoid unnecessary bankruptcy filings by partners and unnecessary litigation. It also became clear in each case that the issuance of an injunction or its equivalent to bar future actions against contributing partners was the *sine qua non* of the confirmed plan.

The ABA has carefully evaluated the problems and solutions set forth in the foregoing cases in formulating the proposed amendments to the Bankruptcy Code. The extended stay, which is analogous to a permanent injunction, is a key factor of the amendments. Although the foregoing cases involve large professional partnerships, the problems encountered and the resolutions embraced are equally applicable to all partnership bankruptcy cases.

The ABA believes that the Bankruptcy Code should be amended so that a partnership bankruptcy will trigger an automatic stay of a limited duration of sixty days. Although general partners may be liable for some or all of the debts of the partnership under non-bankruptcy law, the courts have generally given heed to the literal language of the Bankruptcy Code and its legislative history negating the argument that the property of a partnership includes the property of its member general partners. Thus, the automatic stay has been generally held not to bar actions, proceedings, or acts directed against a general partner or its property.

Experience in the administration of partnership cases has demonstrated the crucial importance in Chapter 11 partnership cases of the issuance of an injunction against the enforcement of partnership creditors' rights against general partners and their property. The automatic stay will prohibit partnership creditors from exercising their collection efforts against partners or partners' property. The purpose of the automatic stay is to preserve the partners' property for distribution in the partnership case. By obviating the necessity for the partnership trustee or the partnership as a debtor-in-possession to seek and obtain an injunction against actions, proceedings and acts by partnership creditors directed against general partners, the extended stay accomplishes the same purpose and result for the benefit of the partnership creditors, insofar as the general partner's assets liable for the partnership debts are concerned, as the automatic stay of Section 362 does with respect to the partnership assets.

Further, the American Bar Association proposes an amendment that would allow the stay to be extended to non-debtor partners as a part of the confirmation of a plan. Courts should be permitted to issue an extended stay of actions, proceedings and acts against a general partner in a partnership

[1] These bankruptcy cases studied by the ABA include the following: (1) *Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey* (Bankr. S.D.N.Y.); (2) *Myerson & Kuhn* (Bankr. S.D.N.Y.); (3) *Laventhol & Horwath* (Bankr. S.D.N.Y.); (4) *Heron, Burchette, Ruckert & Rothwell* (Bankr. D.D.C.); and (5) *Gaston & Snow* (Bankr. S.D.N.Y.).

case when the general partner has made a contribution to the payment of the partnership's debts, or assumed a commitment to make such a contribution in accordance with the provisions of a confirmed plan or order confirming a plan. Experience has demonstrated that recoveries by partnership creditors may be significantly enhanced if general partners can be persuaded to contribute to a recovery pool, post-petition future earnings, exempt property, and other assets not otherwise available to partnership creditors, in exchange for protection against collection suits by partnership creditors and suits for contribution and indemnification by copartners and the trustee of the partnership or the partnership as a debtor-in-possession.

Without the extended stay, individual creditors would sue individual general partners, and general partners would then cross-claim against each other for contribution and sue the debtor for indemnification. The probable result would be a costly and time-consuming web of litigation replete with attendant attachments, garnishments and executions. Personal bankruptcy would be a likely consequence for many. By preventing a haphazard scramble for the assets of general partners, and by facilitating an orderly distribution scheme, the permanent injunction under the extended stay ensures that general partners will be protected and that creditors' recoveries will be maximized. The extended stay should not bar actions, proceedings, or acts against general partners who do not assume a commitment or fail to fulfill a commitment to pay partnership debts. The extended stay does not constitute nor may it be deemed to be a release of joint tortfeasors. Because the extended stay is tied to confirmation of a plan, compliance with the "best interests of creditors" test, which is inherent in the confirmation process, is ensured.

In sum, the ABA urges the Subcommittee to support legislation, generally in the form of the attached Appendix B, to establish a partnership bankruptcy structure in the Code. As part of this new structure, the ABA endorses an automatic stay inhibiting post-bankruptcy suits against general partners for partnership liabilities, to remain in effect for sixty days after a bankruptcy filing. The ABA also believes that such an amendment should include automatic stays of transfers outside the ordinary course of non-bankruptcy property by general partners of the filing partnership.

Thank you for considering the views of the ABA on these important bankruptcy matters. If you would like more information regarding the ABA's positions on these issues, your staff may contact our senior legislative counsel for bankruptcy law issues, Larson Frisby, at (202) 662-1098.

Sincerely,

Denise A. Cardman

Denise A. Cardman
Acting Director

cc: All members of the House Judiciary Subcommittee on Commercial and Administrative Law

APPENDIX A

110TH CONGRESS
1ST SESSION

To amend title 11, United States Code, to make technical amendments relating to bankruptcy, and for other purposes.

IN THE ______ OF THE UNITED STATES

______ introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 11, United States Code, to make technical amendments relating to bankruptcy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bankruptcy Reform Technical Amendments Act of 2007".

SEC. 2. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date of enactment of this Act.

TITLE I—ATTORNEY SANCTIONS

SEC. 101. SIGNATURE OF ATTORNEY

Section 707(b)(4) of title 11, United States Code, is amended to read as follows:

"(4) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—

(A) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

(B) determined that the petition, pleading, or written motion—

(i) is well grounded in fact; and

(ii) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1)."

SEC. 102. GROUNDS FOR AWARD OF COSTS

Section 707(b)(5)(A)(ii)(II) of title 11, United States Code, is amended by striking "requirements of clauses (i) and (ii) of paragraph (4)(C)" and inserting "requirements of clauses (A) and (B) of paragraph (4)".

SEC. 103. REAFFIRMATION AGREEMENT CERTIFICATIONS

Section 524(k)(5) of title 11, United States Code, is amended—

(1) by striking subparagraphs (B) and (C); and

(2) by striking "consist of" and all that follows through "(A) The following" and inserting "consist of the following".

SEC. 104. DEFINITION OF DEBT RELIEF AGENCY.

Section 101 (12A) of title 11, United States Code, is amended by inserting ", other than an attorney or an employee of an attorney," after "means any person".

SEC. 105. DISCLOSURES.

Section 527(b) of title 11, United States Code, is amended—

(1) by striking "AN ATTORNEY OR" each place that term appears and inserting "A"; and

(2) by striking "THE ATTORNEY OR" and inserting "THE".

SEC. 106. SENSE OF CONGRESS REGARDING ENFORCEMENT OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

Title III of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109-8, 119 Stat. 75) is amended by striking section 319 and inserting the following:

"SEC. 319. SENSE OF CONGRESS REGARDING ENFORCEMENT OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

"It is the sense of Congress that significant fraud and abuse exists in the bankruptcy system, and that in order to curb such fraud and abuse, Federal bankruptcy courts should vigorously enforce rule 9011 of the Federal Rules of Bankruptcy procedure (11 U.S.C. App.).".

APPENDIX B

RESOLUTION ADOPTED BY THE

HOUSE OF DELEGATES

OF THE

AMERICAN BAR ASSOCIATION

AUGUST 1996*

RECOMMENDATION

RESOLVED, That the American Bar Association approves the proposed amendments to the Bankruptcy Code generally in the form attached as Appendix A dated May, 1996, to the Report accompanying this Recommendation and urges that the proposed amendments be approved and adopted by the National Bankruptcy Review Commission and Congress as the basis for administration and resolution of partnership cases under the Bankruptcy Code.

*Note: The "Recommendation" and "Proposed Amendments," but not the "Report," constitute official ABA policy.

REPORT

The Ad Hoc Committee is comprised of representatives from the Tax, Partnership, and Business Bankruptcy Committees. The Ad Hoc Committee has proposed amendments to the Bankruptcy Code which form the basis for administration and resolution of partnership cases under the Bankruptcy Code. The proposed amendments to the Bankruptcy Code are attached as Appendix A.

An overview of the proposed amendments is found in an article by Morris W. Macey and Frank R. Kennedy entitled "Partnership Bankruptcy and Reorganization: Proposals for Reform," which appears in Volume 50, Number 3 of THE BUSINESS LAWYER. Professor Kennedy, the original Reporter for the Bankruptcy Code, has served as the Reporter for the Ad Hoc Committee.

The Ad Hoc Committee has always conducted open meetings. Consequently, there has been broad based participation in the work of the Committee.

Partnerships are a popular vehicle for doing business. Partnerships include the two person small business, the single asset real estate venture, and the large professional service firm. By its nature, the general partnership does not afford limited liability to its members. Rather, the liability of members of a partnership for debts of the partnership is determined by state law and the partnership agreement. Consequently, the determination and enforcement of liability for the debts of an insolvent partnership involves a multitude of difficult and seemingly unanswerable questions.

The complexities of the intersection between partnership and insolvency laws have defied resolution. The result is that currently only one provision of the Bankruptcy Code -- 11 U.S.C. § 723 -- addresses a partnership bankruptcy. This section authorizes the trustee of a partnership in a Chapter 7 liquidation to claim and collect a deficiency of the partnership estate from a general partner and does not apply to Chapter 11 reorganizations.

The estate of many partnerships, especially professional or service partnerships, can be preserved only by the Chapter 11 process. This fact has been exemplified by five recent bankruptcies involving insolvent professional partnerships: (1) *Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey* (Bankr. S.D.N.Y.); (2) *Myerson & Kuhn* (Bankr. S.D.N.Y.); (3) *Laventhol & Horwath* (Bankr. S.D.N.Y.); (4) *Heron, Burchette, Ruckert & Rothwell* (Bankr. D.D.C.); and (5) *Gaston & Snow* (Bankr. S.D.N.Y.).

These five cases involve remarkably similar facts. Each involved either a large law or accounting firm which sought Chapter 11 bankruptcy relief to wind up its affairs. In each case, the bankruptcy court was forced to formulate a remedy that would encourage voluntary contribution by general partners to maximize the distribution of property of the estate and simultaneously avoid unnecessary bankruptcy filings by partners and unnecessary litigation.

In each of the cases it was clear that the issuance of an injunction or its equivalent to bar future actions against contributing partners was the *sine qua non* of the confirmed plan. As the Court stated in *Heron, Burchette*, 148 B.R. 660, 667 (Bankr. D. D.C. 1992):

The injunction is also essential to provide maximum payout and fair distribution under the plan. The absence of an injunction would result in extensive litigation and personal bankruptcies for many partners. Many smaller creditors would not be able to maintain their claims as it would not be worth the cost. Thus, the entry of the permanent injunction benefits all the creditors being enjoined and is consistent with the Code's goal of maximizing return on a collective basis to all creditors.

The Ad Hoc Committee carefully evaluated the problems and solutions set forth in the foregoing cases in formulating the proposed amendments to the Bankruptcy Code. The extended stay, which is analogous to a permanent injunction, is a key factor of the amendments. Although the foregoing cases involve large professional partnerships, the problems encountered and the resolutions embraced are equally applicable to all partnership bankruptcy cases. The result of the Ad Hoc Committee's work are the amendments, which propose a new Subchapter IV of Chapter 5 of the Bankruptcy Code.

Under proposed amendment § 563, a bankruptcy of a partnership will trigger an automatic stay of a limited duration of sixty days. The automatic stay will prohibit partnership creditors from exercising their collection efforts against partners or partners' property. The purpose of the automatic stay is to preserve the partners' property for distribution in the partnership case.

Proposed amendment § 564 allows the stay to be extended as nondebtor partners as a part of the confirmation of a plan. Because the extended stay is tied to confirmation of a plan, compliance with the best interests of creditors test, which is inherent in the confirmation process, is ensured.

Proposed amendment § 565 further requires disclosure by partners of their assets and liabilities as a condition of the continuance of the stay. Proposed amendment § 566 prohibits the participating partners from disposing of their property other than in the ordinary course of business or for ordinary and usual personal purposes during the course of the stay.

Respectfully Submitted:

Herbert S. Wander, Chair
Section of Business Law

APPENDIX A

PROPOSED AMENDMENTS TO THE BANKRUPTCY CODE RELATING TO PARTNERSHIPS
May, 1996

CHAPTER 1--GENERAL PROVISIONS

§ 101. Definition of a general partner

(26A) except as provided in section 561, "general partner" means an entity that as a result of an existing or former status as an actual or purported general partner in an existing, former, predecessor, or affiliated partnership, is liable under applicable nonbankruptcy law for one or more of the debts of the partnership.

Comment

When the Bankruptcy Code refers to "general partner," the reference includes any entity that is liable for the debts of a partnership by reason of a status as a "general partner" in the partnership, whether the status was coexistent with the partnership from the filing of the petition or preexisting. *See Tatge v. Chandler (In re Judiciary Tower Associates)*, 175 B.R. 796, 802 (Bankr. D.D.C. 1994); *cf., Kipperman v. Yousif (In re Miramar Mall Limited Partnership, Inc.)*, 152 B.R. 631 (Bankr. S.D. Cal. 1993) (general partner not personally liable for partnership debts that predated his admission to the partnership). The definition of "general partner" includes any entity liable as a general partner by estoppel, as an implied general partner, or otherwise under applicable nonbankruptcy law. A general partner does not include any entity liable solely as a guarantor of a partnership debt. It is immaterial when the status began or when or whether it was terminated so long as the entity is personally liable for debts of the partnership. The applicability of the definition of "general partner" is not affected by special characterizations in the partnership agreement, *e.g.*, as a "contract partner" or "senior principal."

CHAPTER 3--CASE ADMINISTRATION

SUBCHAPTER I-COMMENCEMENT OF A CASE

§ 303. Involuntary cases

(b) [Delete "or" at the end of subsection (b)(3)(B), delete "(4)" at the beginning of subsection (b)(4), substitute "(5)" therefor, and add insert after subsection (b)(3)(B) the following:]

(4) by the trustee of a partnership against a general partner of such partnership if relief has been ordered under this title with respect to such partnership.

Comment

Section 303(b) of the Bankruptcy Code authorizes creditors of a general partner to file an involuntary petition against a general partner. A creditor of a partnership is eligible to be a petitioner against a general partner. *In re Elsub Corp., 66 B.R. 172 (Bankr. D. N.J. 1986)* (partnership creditors counted in determining whether general partner had more than 11 creditors under section 303(b)(2)); *In re Lamb, 40 B.R. 689, 692-93 (Bankr. E.D. Tenn. 1984)* (trustee of partnership holding judgment against general partner held to be eligible petitioner under section 303(b)(1) & (2)). Under proposed section 562(b) and (d), derived from section 723 of the Bankruptcy Code, the trustee of a partnership debtor is a creditor of a general partner for the full amount of all the claims of creditors allowed in the partnership case. Although the partnership trustee may proceed against a general partner to enforce the general partner's liability for partnership debts, it may be more efficient and expeditious to administer the general partner's estate under the Bankruptcy Code. The proposed section 303(b)(4) contemplates that the requirements of section 303(h) would apply to the trustee's petition, but the number, the amount, and the nature of the claims of the creditors of the partnership or general partner would not be in issue.

CHAPTER 5--CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER III--THE ESTATE

§ 541(a)(3).

Substitute "562" for "723."

SUBCHAPTER IV--CASES OF PARTNERSHIPS

§ 561. Rules applicable to former partners

Notwithstanding section 101(26A), a former partner of a partnership is not, absent a specific court order to the contrary, required to consent to a voluntary petition by a partnership, to be served with a petition or summons in an involuntary case against a partnership, or to perform procedural duties imposed on a general partner of a debtor partnership.

Comment

Bankruptcy Rule 1004(a) requires all general partners to consent to a voluntary petition filed by or on behalf of a partnership, and Bankruptcy Rule 1004(b) requires a copy of an involuntary petition against a partnership and a summons to be served on each general partner. The expanded definition of "general partner" in section 101(26A) is not intended to encumber the commencement of voluntary or involuntary cases by or against partnerships by involving former partners in the pleadings and service of process. Likewise the amended definition of "general partner" is not intended to subject a former partner to duties of disclosure imposed on existing partners by Bankruptcy Rule 1007(g) absent a court order directed to the former partner.

If the changes in sections 101 and 561 proposed above are adopted, the proposed amendment of section 303 by the addition of section 303(1) would be unnecessary, and it should be withdrawn.

§ 562. Rights of partnership trustee against general partners

(a) The court in which a partnership case is pending may determine who is or may be liable as a general partner for the debts of the partnership and may determine the rights among the general partners with respect to the debts of the partnership.

Comment

Section 562(a) clarifies the jurisdiction of the court in which a partnership case is pending to determine the liabilities of the former and current general partners to the trustee (or the partnership as a debtor-in-possession) and to each other by way of contribution or indemnification. The jurisdiction extends to the determination of liabilities of former and current general partners at the time of the commencement of the case.

Section 5d of the Bankruptcy Act purported to confer on the court of bankruptcy which had jurisdiction of one of the general partners "jurisdiction of all the general partners and of the administration of the partnership and individual property." The comprehensive implications of the provision were never tested in the courts. The subdivision literally seemed to give the bankruptcy court in which a general partner was adjudicated a bankrupt the power to draw the estates of the partnership in which he was a member and of the other general partners into *custodia legis* for the purpose of administration under the Bankruptcy Act. The subdivision was, however, treated only as a venue provision, depriving the partnership, any other general partner, or any creditor of either of any objection to venue for the administration of a partnership estate or the estate of a general partner if venue had been properly selected for any general partner of the firm. *See Meek v. Centre County Banking Co., 268 U.S. 426, 431-32 (1925).*

The entry of an order for relief by or against a partnership does not constitute a binding determination of liability of any entity as a general partner who was not notified or given the opportunity to be heard on the issue of its status. *See Manson v. Williams, 213 U.S. 453 (1909); Carter v. Whisler, 275 Fed. 743 (8th Cir. 1931); Tate v. Hoover, 345 Pa. 19, 26 A.2d 665, 670, cert. denied, 317 U.S. 677 (1942).*

(b) If there is a deficiency of property of the estate to pay in full all claims which are allowed in a partnership case, other than claims for contribution against partners, and with respect to which a general partner of the partnership is personally liable, the trustee shall have a claim against each general partner to the extent that under applicable nonbankruptcy law such general partner is personally liable for such deficiency, which claim shall not be reduced on account of any right of contribution or indemnity among general partners. The amount of the deficiency shall be estimated if its determination would unduly delay the administration of the case. Any action or proceeding to enforce a liability for a deficiency under this section shall be commenced no more than four years after the entry of the initial order for relief in the case concerning the partnership.

Comment

Section 562(b) is an adaptation of section 723(a) of the Bankruptcy Code, extending the right of the trustee of a partnership in a Chapter 7 case under the Code to a partnership trustee in a Chapter 11 or 12 case. The subdivision would codify the views of the rights of a Chapter 11 trustee or debtor-in-possession adopted in the following cases: *Litchfield Co. of S.C. Ltd. Ptshp. v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. Ptshp.), 135 B.R. 797, 802-05 (W.D.N.C. 1992)* (under U.P.A. §§ 18(a) 40(a) and (d), partnership assets held to include "contributions of the [general] partners necessary for the payment of all liabilities," and these provisions held to empower debtor-in-possession in a partnership case to compel each general partner to contribute to covering losses of partnership); *Tatge v. Chandler (In re Judiciary Tower Associates)*, 175 B.R. 796, 801-03 (Bankr. D.D.C. 1994) (former partners held liable to trustee under section 723(a) to the extent of their liability under state law notwithstanding their prepetition withdrawal from the partnership); *Commercial Bank v. Price (In re Notchcliff Associates), 139 B.R. 361, 370-71 (Bankr. D. Md. 1992)* (Chapter 11 trustee of partnership held entitled under confirmed partnership plan to proceed against nondebtor general partners to collect partnership indebtedness pursuant to U.P.A. § 40 and sections 541(a) and 544(a) of the Bankruptcy Code to the extent of the deficiency of the general partners' assets); *In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, Case No. 88B10377(PBA) (Bankr. S.D.N.Y. 1991)* (Chapter 11 plan providing for contributions of $40.7 million by 256 of 284 general partners confirmed); *In re Myerson & Kuhn, Case No. 89B13346 (PBA) (Bankr. S.D.N.Y. 1991)* (Chapter 11 plan providing for contributions of $4.4 million by 43 of 51 general partners approved); *In re Laventhol & Horwath, Case No. 90B13346 (PBA) (Bankr. S.D.N.Y. 1992)* (Chapter 11 plan providing for contributions of $35 million by 500 of 636 general partners confirmed); *In re Gaston & Snow, Case No. 91B14594(CB) (Bankr. S.D.N.Y. 1993)* (Chapter 11 plan providing for contributions of $10.4 million by 107 of 148 general partners); *cf. National Tax Credit Partners L.P. v. Havlik, 20 F.3d 705, 708 (7th Cir. 1994)* ("The right to collect from the general partners is 'property of the estate.'"); *In re Safren, 65 B.R. 566, 567-68, 575 (Bankr. C.D. Cal. 1986)* (administrative claim against estate of partnership that had been dismissed held to be a general unsecured claim against consolidated estates of general partners who were debtors-in-possession). The proposed subdivision would overrule the following cases insofar as they declined to grant relief for the benefit of partnership creditors in Chapter 11 cases: *Andrew v. Coopersmith (In re Downtown Investment Club III), 89 B.R. 59, 65 (B.A.P. 9th Cir. 1988)* (bankruptcy court's modification of Chapter 11 plan by releasing general partner from personal liability for withholding taxes reversed); *Russell, Jarvis, Estabrook & Dashiell v. Kaveney (In re Kaveney), 60 B.R. 34 (B.A.P. 9th Cir. 1985)* (fee application of counsel for trustee of Chapter 11 partnership debtor for services rendered trustee in proceeding against estates of general partner and his wife denied on the ground that section 723 applies only in a Chapter 7 case); *In re Monetary Group, 55 B.R. 297,298-99 (Bankr. M.D. Fla. 1985)* (section 103(b) held to preclude indemnity by general partners of liquidating partnership); *MBank Corpus Christi v. Seikel (In re I-37 Gulf Limited Partnership), 48 B.R. 647, 650 (Bankr. S.D. Tex. 1985)* (partnership creditor's motion for turnover of general partner's assets to partnership debtor-in-possession denied in view of inapplicability of section 723 in Chapter 11 partnership case).

Section 212 of the Bankruptcy Reform Act 1994 was intended to clarify that a general partner of a registered limited liability partnership would be liable in bankruptcy only to the extent a general partner would be personally liable for a deficiency according to the registered limited liability statute under which the partnership was formed. 140 Cong. Record 10768 (daily ed. Oct. 4, 1994). This subsection (b), when read with subsection (f) of this section, accommodates section 212 because it applies nonbankruptcy law to determine the extent of a deficiency claim against the general partner.

The case law is in disarray in dealing with the time applicable to the trustee's recovery of a deficiency under section 723. Several court opinions and commentators treat the cause of action recognized by section 723 as one of the rights accorded a trustee by section 544(a): *Andrew v. Coopersmith (In re Downtown Investment Club III), 89 B.R. 59, 65 (B.A.P. 9th Cir. 1988); Marshack v. Mesa Valley Farms, L.P. (In re The Ridge II), 158 B.R. 1016, 1020, 1023-24 (Bankr. C.D. Cal. 1993); Stamps v. Knobloch (In re City Communications, Ltd.), 105 B.R. 1018, 1023-24 (Bankr. N.D. Ga. 1989); Pettigrew v. Barton (In re Barton & Ludwig), 37 B.R. 377, 379 (Bankr. N.D. Ga. 1984);* 3 Daniel Cowans, BANKRUPTCY LAW AND PRACTICE § 15.4 (1989); 4 Lawrence P. King, COLLIER ON BANKRUPTCY ¶ 723.02, p. 723.2 (15th ed. 1993). The bankruptcy and district courts in *Miller v. Spitz (In re CS Assoc.), 156 B.R. 755 (Bankr. E.D. Pa. 1993) and 150 B.R. 989, 905-06 (Bankr. E.D. Pa. 1993), aff'd sub nom. Silk v. Miller (In re CS Assoc.), 167 B.R. 368, 369 (E.D. Pa. 1994),* questioned the coupling of the trustee's rights under section 544 with his rights under section 723. After noting that the trustee's rights under section 544 are directed against third parties and are based on prepetition acts, the bankruptcy court pointed out in 160 B.R. at 904-06 that the right of action recognized by section 723 cause of action cannot accrue until after the determination of the existence and extent of the deficiency, and the district court ultimately held that the assertion of the section 723 cause of action was subject to no statute of limitations. Since there was no lack of diligence on the part of the trustee and no prejudice to the defendant general partner, the trustee's proceeding was not barred by laches. The court in *Wilson v. Vanteicher (In re Jones), 161 B.R. 180 (Bankr. N.D. Tex. 1993),* applied a state statute of limitations of four years but held that the limitation period did not begin to run until entry of a final judgment for the deficiency in favor of the trustee. Two other cases deeming state limitations to apply to action grounded on section 723 are *McGraw v. Betz (In re Bell & Beckwith), 112 B.R. 858, 861-63 (Bankr. N.D. Ohio 1990)* and *In re Golden H. Packing Co., 11 B.R. 111 (Bankr. D. Nev. 1981)* (partnership trustee denied recovery against deceased general partner's estate because of failure to file a claim within applicable probate limitations).

As the court recognized in *McGraw v. Betz, supra* at 868-69, "[r]equiring the exact deficiency to be determined prior to allowing a trustee to file a complaint would result in § 723(a) being unavailable in all but the most uncomplicated liquidations." The section here proposed authorizes the trustee to proceed to enforce the recovery of its existence and amount and to act on an estimate as it may under section 502(c). The section does not go so far, however, as *Silk v. Miller, supra,* which declares that no statute of limitations applies to proceedings under section 723. The section enacts a federal cause of action subject to a federal statute of limitations. The section leaves the court free to reduce or extend the period allowable for bringing an action under section 562 when good cause is shown.

(c) Pending determination of such deficiency, the court may order any general partner (i) to provide the estate in such amount as the court shall determine to be appropriate under the circumstances with indemnity for, or assurance of payment of, any deficiency recoverable from such general partner or (ii) not to dispose of property not already subject to a stay under section 566(a) of this title.

Comment

This subsection is an almost verbatim adaptation of the second sentence of section 723(b). The sparse case law recognizes the propriety of bankruptcy court orders restraining depletion of partners' assets pending the administration of a partnership case. *Tatge v. Joseph Bucheit & Sons Co. (In re Judiciary Tower Associates)*, Adv. No. 80-088 (Bankr. D.D.C. 1990); *Jonas v. Newman (In re Comark Limited Partnership)*, 53 B.R. 945 (Bankr. C.D. Cal. 1985).

(d) Notwithstanding section 728(c) of this title, the trustee of a partnership has a claim against the estate of each general partner in such partnership that is a debtor in a case under this title for the full amount of all claims of creditors allowed in the case concerning the partnership for which such general partner would be otherwise personally liable as a general partner under applicable nonbankruptcy law. Notwithstanding section 502 of this title, there shall not be allowed in such general partner's case a claim on which both such general partner and such partnership are liable, except to any extent that such claim is allowable and secured only by property of such general partner and not by property of such partnership.

Comment

Subsection (d) is derived from the first and second sentences of section 723(c). Unlike under section 723(c), however, the claim of a trustee of a debtor partnership against the estate of a debtor general partner includes only the amount of allowed claims against the debtor partnership for which the general partner would otherwise be personally liable under applicable nonbankruptcy law. This provision recognizes that a general partner may not be personally liable for all claims against the partnership and is consistent with the calculation of the claim of the partnership trustee against nondebtor general partners under subsection (b).

(e) The claim of a trustee of a partnership debtor, or the claim of a creditor of a partnership that is not a debtor in a case under this title, is entitled to share in the distribution in a general partner's case in the same manner and to the same extent as any other claim of the same or similar kind of a creditor of such general partner.

Comment

Section (e) is an adaptation and elaboration of the last sentence of section 723(c) of the Bankruptcy Code. This sentence is the basis for the overstatement in the legislative history of the Bankruptcy Code that the Code "repeals the jingle rule." *See House Rep. No. 95-595, 95th*

Cong, 2d Sess. 381 (1977); Sen. Rep. No. 95-989, 95th Cong., 2d Sess. 85 (1978). See also the following statement in the House Report at pp. 200-01:

> The final sentence of 11 U.S.C. § 723(c) makes clear that the jingle rule is abolished with respect to the partnership creditor's rights in the assets of a partner; the trustee of the partnership is entitled to share pro rata with unsecured creditors of a partner in dividing the partner's estate. This recognizes the traditional rights of creditors of the partnership to share on an equal basis with other creditors of a partner under some nonbankruptcy laws adopted before the Uniform Partnership Act. On the other hand,... the jingle rule still applies in principle with respect to the partners [sic] interest in the partnership. The partners [sic] interest is worthless until all administrative expenses and partnership claims have been paid.

The last sentence of section 723(c) does not, however, except by a strained construction, affect the applicability of the jingle rule in any cases other than Chapter 7 cases where both a partnership and one of its general partners are debtors. *See* Frank R. Kennedy, *"Partnerships and Partners Under the Bankruptcy Code: Claims and Distribution," 40 Wash. & Lee L. Rev. 50,59-60 (1983).* The proposed subdivision would accomplish the repeal of the jingle rule in any general partner's case under Title 11 insofar as the rule accords priority to a general partner's nonpartnership creditors in the distribution of a general partner's estate, irrespective of whether the partnership is also a debtor and of whether the general partner's case is administered under Chapter 7, 11, 12, or 13.

(f) The trustee shall apply any recovery from a general partner under subsection (b), or from the estate of a general partner under subsections (d) and (e), of this section only to the payment of deficiencies for which such general partner is personally liable as a general partner under applicable nonbankruptcy law. Any property constituting recoveries under subsections (b), (d), and (e) of this section not applied to the deficiencies as herein provided shall be equitably distributed by the trustee to such general partners or general partners' estates as may be ordered by the court after notice and hearing.

Comment

The first sentence of subsection (f) further implements the policy of conforming the provisions of this section to the respective rights of creditors of a partnership and its general partners under applicable nonbankruptcy law. The provisions of subsection (f) limit the application of recoveries by the trustee from each general partner or general partner's estate under subsections (b), (d), and (e) to the claims supporting the right of each such recovery. Like existing section 723(a), proposed subsections (b), (d), and (e) recognize that a general partner may not be liable under applicable nonbankruptcy law for all of the debts of the partnership and therefore limit the right of recovery by the trustee from general partners to such claims as to which the general partner was liable under applicable nonbankruptcy law. Under existing law developed in Chapter 7 cases, recoveries from general partners under section 723(a) and (c) are added to the bankruptcy estate of the partnership under section 541(a)(3) and included in the distributions under section 726 to creditors holding allowed claims against the partnership, which may include claims of creditors for which a general partner was not liable under applicable nonbankruptcy law.

However, adherence to the principles of partnership law generally dictates that absent some express undertaking or a partnership-by-estoppel argument, a general partner is personally liable only for the debts of the partnership incurred during his or her tenure as a general partner. Accordingly, not all general partners are necessarily liable to all creditors of the estate. The corollary from the creditors' perspective is that creditors holding claims under partnership law against greater numbers of general partners should receive from general partner contributions a greater recovery than creditors with claims against fewer general partners.

The liability of a particular general partner to a particular creditor is further complicated by the possibility of a contractual modification of the general partner's liability under partnership law. It is not uncommon for a lease of space or a loan to a partnership to be either nonrecourse or have limited recourse to the individual general partners. Similarly, if a creditor has built into its contract with the partnership a provision releasing general partners upon their retirement or withdrawal from the partnership, the effect of this provision is not abrogated by the partnership's bankruptcy filing. To avoid the result required in Chapter 7 cases which is inconsistent with the reorganization concept of Chapter 11 and the concept of marshaling, subsection (f) limits the application of such recoveries to claims for which the general partner was liable under applicable nonbankruptcy law. Thus, there must be a careful analysis of the specific contractual relationship between each creditor and each general partner and the allocation of contributions of similarly situated general partners to similarly situated creditors in each partnership case. *See* Alfred J. Bianco & Joseph T. Moldovan, *Partnership Break-Ups: Who Pays?, February 7, 1994, N.Y.L.J., at 7, col. 1.* This approach is suggested by a limited aspect of the D.C. Circuit's opinion in *In re AOV Industries, Inc., 792 F.2d 1140 (D.C. Cir. 1986)*, where the court held that a reorganization plan subjected a creditor to unequal treatment in violation of section 1123(a)(4) of the Bankruptcy Code because it required the creditor to forego its direct claim against nondebtor/third parties who were funding the plan in order to receive a distribution under the plan.

Building on the *AOV* decision, and recognizing that the cornerstone to any partnership reorganization plan is a waiver by individual creditors of their direct claims against the general partners in exchange for a recovery from the fund created by the voluntary contributions of general partners, the inter-creditor allocation of general partner contributions requires (1) the development in a partnership bankruptcy of a matrix detailing the dates of service of each general partner and the effect of contractual release provisions, and (2) the allocating of creditors into similarly situated groups in accordance with the claims of each group to similarly situated general partners. *See In re Gaston & Snow, Case No. 91B14594 (CB) (Bankr. S.D.N.Y. 1993)* (plan of reorganization contained a classification scheme where creditors were classified differently based upon their sharing from the pool of partnership estate assets and the separate pool of voluntary general partner contributions). The result of this methodology is that each creditor would theoretically share in two funds: (1) pro rata in the assets of the estate, or as required based upon the Bankruptcy Code's priority scheme, and (2) a percentage interest in the general partner contribution pool based upon the attribution to each creditor group of contributions to be made by all general partners liable to such group. There can be no bright-line test to determine the most appropriate method of attributing general partner contribution among various creditor groups. To some degree, such an exercise is case-and-fact specific and may require the application of relevant state law relating to the marshaling doctrine.

However, the determination of the claims subject to this allocation should not be burdensome since such claims and their deficiencies will have been identified as a basis for asserting the right of recovery under subsection (b) or (d) against each general partner or general partner's estate.

The second sentence of subsection (f) is a refinement of section 723(d) of the Bankruptcy Code and, in keeping with the provisions of the first sentence of this subsection, provides authority for the bankruptcy court to return any surplus of recoveries from general partners not applied to claims for which such general partners were liable. The allocation of such surplus is to be applied on a case-by-case basis in accordance with the court's determination of the equities of the case.

(g) Notwithstanding section 726 of this title, the trustee shall distribute property of the partnership estate not subject to distribution under subsection (f) of this section in payment of allowed claims against the partnership in accordance with the applicable provisions of this title without consideration of such recoveries or their distribution as provided in subsection (f).

Comment

The partnership estate may consist of property constituting recoveries by the trustee under subsections (b), (d), and (e) together with other property of the partnership estate. Subsection (f) provides for the distribution of property of the partnership estate constituting recoveries under subsections (b), (d), and (e). Subsection (g) deals with the distribution of other property of the partnership estate by providing for the distribution to the holders of allowed claims against the partnership (including, if applicable, creditors of the partnership entitled to distribution under subsection (f)) of such property without consideration of the recoveries provided under subsection (f).

(h) The expenses of administration of a partnership case under section 503 of this title shall be paid from the property constituting recoveries from general partners under this section and from other property of the estate in such proportions as the court shall determine are fair after reasonable notice and hearing.

Comment

This subsection is derived from section 5f of the Bankruptcy Act and adapted to accommodate the provisions of this section. In several of the larger professional partnership cases, issues have arisen concerning responsibility for payment of the costs of administration of the case. Arguments have been made by creditors that all costs of administration should be borne by those general partners who remain general partners at the time the case is filed. Conversely, general partners have argued that it is unfair to increase a general partner's contribution amount in situations where creditors' committee activity has been responsible for the high cost of the case. The provisions of subsection (h) are predicated on the presumption that the court will take into consideration the liability, if any, of a general partner or a general partner's estate for costs of administration in apportioning the costs of administration of the estate.

§ 563. Temporary stay of proceedings and acts against general partners

(a) A petition filed under section 301 or 303 in a partnership case operates as a stay of–

(1) the commencement or continuation of an action or proceeding against a general partner to recover on a claim against the partnership debtor that arose before the commencement of the partnership case;

(2) the enforcement against a general partner, or against property of a general partner, of a judgment obtained against the partnership before the commencement of the partnership case;

(3) any act by the holder of a claim against the partnership debtor to obtain possession of or from, to exercise control over, or to create, perfect, or enforce a lien against the property of a general partner for the purpose of collecting or enforcing the holder's claim against the partnership; and

(4) the commencement or continuation of any action or proceeding by any entity other than the partnership to enforce contribution or indemnification with respect to any liability arising out of the general partner's relation to the partnership and any other general partner.

Comment

Section 563 extends the automatic stay triggered by the filing of a petition by or against a partnership to actions, proceedings, and acts directed against a general partner or a general partner's property. Although general partners may be liable for some or all of the debts of the partnership under nonbankruptcy law, the courts have generally given heed to the literal language of the Bankruptcy Code and its legislative history negating the argument that the property of a partnership includes the property of its member general partners. *See House Rep. No. 95-595, 95th*

Cong, 2nd Sess. 200 (1978). Thus, the automatic stay has been generally held not to bar actions, proceedings, or acts directed against a general partner or its property. *In re Two Appeals Arising Out of the San Juan DuPont Plaza Hotel Fire Litigation, 994 F.2d 956, 969 (1st Cir. 1993); Teachers Ins. & Annuity Assn. of America v. Butler, 803 F.2d 61, 65 (2d Cir. 1986); Aboussie Bros. Constr. Co. v. United Missouri Bank of Kirkwood (In re Aboussie Bros. Constr. Co.), 8 B.R. 302 (E.D. Mo. 1981); but, cf., Litchfield Co. of S.C. Ltd. Ptshp. v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. Ptshp.), 135 B.R. 797, 803-05 (W.D.N.C. 1992).* Although section 723(a) recognizes the liability of the general partners for a deficiency of the partnership property to pay the debts of a partnership in a Chapter 7 case, that subdivision is only a contingent and unreliable safeguard of the partnership creditors' rights while the general partners' property remains unprotected from grabs by creditors of the general partners and the partnership pending a determination of the existence of a deficiency during the administration of the partnership case. Experience in the administration of partnership cases has demonstrated the crucial importance in Chapter 11 partnership cases of the issuance of an injunction against the enforcement of partnership creditors' rights against general partners and their property. *See In re Heron, Burchette, Ruckert & Rothwell, 148 B.R. 660, 686 (Bankr. D.D.C. 1992); In re Myerson & Kuhn, 121 B.R. 145,150 (Bankr. S.D.N.Y. 1990); In re Laventhol & Horwath, Case No. 90B13346 (PBA) (Bankr. S.D.N.Y. Aug. 25,1992)* (sec. E, paragraphs 49-51 of the opinion); Harold C. Buschman III & Sean P. Madden, *"The Power and Propriety of Bankruptcy Court Intervention in Actions Between Nondebtors," 47 Bus. Law. 913, 942 (1992)*; Michael J. Crames & Joseph T. Moldovan, *"Section 105 Injunctions Offer Protections to Members of Professional Partnerships," 209 N.Y.L.J. 5 (March 29, 1993)*; Paul R. Glassman, *"Third-Party Injunctions in Partnership Bankruptcy Cases,"* 49 Bus. Law. 1081 (1994). The opinions in the cited cases emphasize that injunctions of suits against the general partners were keystones to the development and consummation of Chapter 11 plans that maximized distributions to partnership creditors. The following cases illustrate the appropriateness of the issuance of an injunction against creditors' proceedings against partners during the administration of a Chapter 7 case. *Tatge v. Chandler (In re Judiciary Tower Associates)*, 175 B.R. 796, 805 (Bankr. D.D.C. 1994); *Jonas v. Newman (In re Comark)*, 53 B.R. 945, 947 (Bankr. C.D. Cal. 1985). Section 563, by obviating the necessity for the partnership trustee or the partnership as a debtor-in-possession to seek and obtain an injunction against actions, proceedings and acts by partnership creditors directed against general partners, accomplishes the same purpose and result for the benefit of the partnership creditors, insofar as the general partners' assets liable for the partnership debts are concerned, as the automatic stay of section 362 does with respect to the partnership assets.

(b) The stay provided by this section shall terminate sixty days after the commencement of the partnership case unless, after notice and hearing, it is extended or otherwise modified by an order entered after a determination by the court that continuance of the stay is necessary to an effective reorganization that maximizes the recovery by partnership creditors of their claims against the partnership and the general partners or will be reasonably necessary to an equitable distribution of assets of the partnership and general partners to their creditors. In any hearing under this subsection, the party requesting an extension has the burden of proof.

Comment

This subdivision (b) recognizes that the stay imposed by section 562 is intended to operate only for a limited period of time. As pointed out by Buschman and Madden in *47 Bus. Law. at 940*, a permanent stay of actions against nondebtor general partners may be justified in connection with partnership reorganization plans, but such relief should be conditioned as provided in section 564. For the purposes of this section, the words "effective reorganization" include a liquidation conducted by the partnership as a debtor-in-possession in a Chapter 11 case, or by an appointed trustee in a case under any chapter of the Code. All professional partnership bankruptcy cases have thus far been liquidating Chapter 11 cases.

(c) On request of a party in interest and after notice and a hearing, the court may grant relief from the stay so provided, such as by terminating, annulling, modifying, or conditioning such stay for cause.

Comment

Subsection (c), an adaptation of section 362(d), recognizes the appropriateness of according the bankruptcy court authority to grant relief from the automatic stay for cause. Relief may be granted on motion by a general partner, the partnership, or a creditor. The temporary stay may be modified with respect to any general partner, any creditor, or all the creditors. Cause for termination would include absence of any reasonable likelihood of reorganization, inability to effectuate a plan, unreasonable delay by the debtor that is prejudicial to creditors, failure to propose a plan with the time fixed by a court, denial of confirmation of every plan proposed, revocation of an order of confirmation, inability to effectuate substantial consummation of a confirmed plan, material default with respect to a confirmed plan, termination of a plan by reason of the occurrence of a condition specified in the plan, or the nonpayment of fees or charges.

§ 564. Extended stay of proceedings and acts against general partners under a confirmed plan

(a) In connection with confirmation of a plan in a partnership case, the court may, without the filing of an adversary proceeding, extend or renew a stay of proceedings and acts (i) initiated by a partnership creditor to enforce the liability of a general partner who has contributed or assumed a commitment to contribute an amount to the payment of the debts in accordance with the provisions of the plan, or (ii) initiated by a general partner or partnership or partnership trustee to enforce a liability for contribution or indemnification against a general partner.

Comment

Section 564(a) authorizes the court to issue an extended stay of actions, proceedings, and acts against a general partner in a partnership case when the general partner has made a contribution to the payment of the partnership's debts, or assumed a commitment to make such a contribution, in accordance with the provisions of a confirmed plan or order confirming a plan. The provision recognizes that as pointed out by Buschman & Madden *in 47 Bus. Law. at 942*, "[t]he prospect of obtaining permanent injunctive relief from partnership creditors provides the debtor's general partners with an incentive to contribute to a reorganization plan." Experience has demonstrated that recoveries by partnership creditors may be significantly enhanced if general partners can be persuaded to contribute to a recovery pool postpetition future earnings, exempt property, and other assets not otherwise available to partnership creditors, in exchange for protection against collection suits by partnership creditors and suits for contribution and indemnification by copartners and the trustee of the partnership or the partnership as a debtor-in-possession. The permanent stay has long been regarded as the *sine qua non* of the larger professional partnership bankruptcies. As Crames and Moldovan note:

> The direct result of an [extended stay] is that creditors are able to receive from general partners on a consensual basis funds that would otherwise be difficult, if not impossible, for them to recover.
>
> Without [the extended stay] individual creditors would sue individual general partners, and general partners would then cross-claim against each other for contribution and sue the debtor for indemnification. The probable result would be a costly and time-consuming web of litigation replete with attendant attachments, garnishments and executions. Personal bankruptcy would be a likely consequence for many. By preventing a haphazard scramble for the assets of general partners, and by facilitating an orderly distribution scheme, the permanent injunction under [the extended stay] ensures that general partners will be protected and that creditors' recoveries will be maximized.

Michael J. Crames & Joseph T. Moldovan, *"Section 105 Injunctions Offer Protections to Members of Professional Partnerships," 209 N.Y.L.J. 5 (March 29, 1993)*. Plans developed in the following cases illustrate the feasibility and advantages of providing an incentive for general partners to contribute nonpartnership assets to the payment of partnership debts. *In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, Case No. 88B10377 (PBA) (Bankr. S.D.N.Y. 1991)*, reported by Wise, *"Final Approval of Finley Kumble Bankruptcy Plan," 206 N.Y.L.J. 1 (Dec. 10, 1991); In re Myerson & Kuhn, Case No. 89B13346 (PBA) (Bankr. S.D.N.Y. 1991); In re Gaston & Snow, Case No. 91B14594 (CB) (Bankr. S.D.N.Y. 1993); In re Heron, Burchette, Ruckert & Rothwell, 148 B.R. 660 (Bankr. D.D.C. 1992); In re Laventhol & Horwath, Case No. 90B13839 (Bankr. S.D.N.Y. Aug. 24, 1992).*

Section 524(e) provides that, except as provided in a subsection dealing with community claims, a discharge of a debtor does not affect the liability of any other entity. This section has been held, however, not to preclude the issuance of an injunction that channels creditors' claims to a fund provided by settling obligors. *Menard-Sanford v. Mabey (In re A.H. Robins Co., Inc.), 880 F.2d 694, 701-02 (4th Cir.), cert denied, 110 S.Ct. 376 (1989); MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 937 F.2d 89, 94 (2d Cir.), cert. denied, 109 S.Ct. 176 (1988); cf. Republic Supply Co. v. Shoaf, 815 F.2d 1046, 1060 (5th Cir. 1987)* (upholding release of nondebtor guarantor by plan that was confirmed without objection on appeal). The extended stay should not bar actions, proceedings, or acts against general partners who do not assume a commitment or fail to fulfill a commitment to pay partnership debts. The extended stay does not constitute nor may it be deemed to be a release of joint tortfeasors.

Inasmuch as the extended stay is to be authorized by statute and may only be obtained if embodied in a plan, it is not necessary for the plan proponent to commence a separate adversary proceeding seeking permanent injunctive relief. To this extent, the decisions of those courts that have required the commencement of an adversary proceeding are rejected.

(b) The stay may be continued or extended pursuant to this section only upon a determination by the court after notice and hearing that the plan complies with section 1129 of this title and that the stay does not discriminate unfairly or inequitably with respect to claims of creditors of the partnership and claims of general partners for contribution and indemnity.

Comment

Subsection (b) requires notice and hearing to afford creditors of the partnership and the general partners and the general partners themselves an opportunity to obtain judicial assurance that the stay is part of a plan that complies with the best-interest-of-creditors test and the other requirements of section 1129, and to object to any feature of the stay that discriminates or otherwise operates unfairly in its treatment of their rights, liabilities, and obligations. This subsection does not presume that all creditors of the partnership or all claimants for contribution and indemnity must be treated in the same way.

(c) (1) A stay with respect to any general partner under this section may be terminated only for a material failure by that general partner to meet a commitment under the plan, or

(2) On request of a party in interest at any time before four years after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke the stay as to any general partner if the stay as to such general partner was procured by fraud.

Comment

This subsection restricts grounds for relief against the stay provided by this section to (1) material breach of a general partner's commitment to contribute to the payment of partnership debts in accordance with the plan or (2) procurement of the stay by fraud. Paragraph (1) incorporates in a modified form the language of section § 1144 and case law generated thereunder. Under paragraph (2) discovery within four years of confirmation that the information provided by a general partner pursuant to section 565 was fraudulent would be grounds to terminate and revoke the stay.

(d) A stay under this section shall not preclude enforcement of a claim of a partnership creditor against a general partner, or against the property of a general partner, who has not contributed or assumed a commitment to contribute to the payment of debts of the partnership in accordance with the confirmed plan of such partnership.

Comment

The tension between the rights of individual creditors and of creditors generally is often resolved in the Code in favor of the rights of the collective creditor body. These amendments continue this dynamic through the imposition of the temporary stay embodied in section 563 and the permanent stay of section 564. However, the *quid pro quo* of granting the nondebtor general partners relief normally found only by recourse to a personal bankruptcy filing is that the benefit of the stay applies only to those who participate or make a commitment to participate in the debtor's plan of reorganization or liquidation. In several of the larger professional partnership cases, the debtors have reserved in their plans the right to proceed against nonparticipating general partners for some period of time after confirmation on the theory that the debtor had greater resources to fund litigation and could distribute any recovery for the benefit of all creditors. Nothing in this section precludes a plan provision reserving to the debtor a brief exclusive period to sue nonparticipants; however, the benefit of such provision is questionable in light of the requirement of section 562(f) that the debtor act merely as a conduit so that any recovery be distributed only to those creditors to whom or to which the general partner is liable under applicable nonbankruptcy law.

§ 565. Disclosure by general partner

Unless otherwise ordered by the court for cause, each general partner shall produce, within 30 days after the entry of an order for relief in a partnership case or within such time as the court shall fix, information concerning such general partner's nonpartnership assets and liabilities and personal financial affairs, and such periodic reports as may be required by the court from time to time. The information provided pursuant to this section shall be subject to examination on conditions prescribed by the court, shall be subject to the penalty of perjury, and shall be submitted in a form and with a content prescribed by rules.

Comment

Section 565 is an elaboration of Bankruptcy Rule 1007(g). When a petition is filed by or against a partnership, there is a substantial likelihood that a deficiency of partnership assets to pay partnership debts in full will occur. In light of the probabilities and in the interest of expediting administration, the section requires the submission by general partners of documents and information regarding nonpartnership assets and liabilities and personal financial affairs in every partnership case unless the court orders otherwise for cause. Bankruptcy Rule 1007(g) refers to a "statement of personal assets and liabilities," but section 565 adopts the language of section 101(32)(B)(ii) of the Bankruptcy Code in identifying these assets and liabilities as "nonpartnership assets and liabilities." (The Uniform Partnership Act in §§ 40(h) and 40(i) refers to "individual property" and "separate property" respectively, but both clauses refer to "separate creditors." Section 2 of the Uniform Fraudulent Conveyance Act refers to "separate assets" and "separate creditors," but section 67d(l)(d) of the Bankruptcy Act, modeled on the U.F.C.A., referred to "separate property" and "separate debts." The Uniform Fraudulent Transfer Act follows the Bankruptcy Code by referring in § 2(d) to "nonpartnership assets" and "nonpartnership debts.") The information required to be disclosed by general partners is needed to enable the partnership debtor or other plan proponent to determine the sources of payments of the deficiency of partnership assets, to allocate to the general partners their respective shares of the deficiency, and, if a plan of reorganization or orderly liquidation is to be proposed, to prepare a liquidation analysis that will assure compliance with section 1129(a)(7). In many of the professional partnership cases, the debtor or trustee has sought and been provided with copies of tax returns and loan applications. *See* Michael J. Crames & Joseph T. Moldovan, *"Section 105 Injunctions Offer Protections to Members of Professional Partnerships," 209 N.Y.L.J. 5, 10 (March 29, 1993)*. Crames and Moldavan refer to "certain specified conditions of confidentiality," but section 107 of the Bankruptcy Code declares that generally "a paper filed in a case under this title" is a public record and "open to examination by an entity at reasonable times without charge." Section 107(b) and Bankruptcy Rule 9018 authorize the court to protect the confidentiality of particular information, but the premise of the statute and the rule is that unless the court perceives a justification for secrecy, the papers filed in a bankruptcy case should be accessible to parties in interest. The Code and Rules do not literally cover papers filed with the trustee or debtor-in-possession, with its attorney, and with creditors' committees, but 18 U.S.C. § 154 subjects to fine and forfeiture of office a "custodian, trustee, or other officer of the court" who "knowingly refuses to permit a reasonable opportunity for the inspection of documents and accounts relating to the affairs of estates in his charge by parties in interest when directed by the court to do so." The provision in proposed section 564 to the effect that information filed pursuant to the section "shall be subject to examination on conditions prescribed by the court" appears to comport with the present law and policy respecting confidentiality of papers in a bankruptcy case.

§ 566. Stay of transfer of nonpartnership property

(a) A petition filed under section 301 or 303 in a partnership case operates as a stay of a voluntary transfer by a general partner of the general partner's nonpartnership property other than (i) in the ordinary course of business in which such general partner is engaged or (ii) for ordinary and usual personal purposes.

Comment

Section 566(a) is an elaboration and implementation of section 723(b) of the Bankruptcy Code. It recognizes that during the administration of a partnership case, general partners may strip their separate estates of assets that may be required to satisfy a deficiency of partnership assets to pay partnership debts. The section does not prohibit a general partner from using, leasing, or disposing of nonpartnership assets since the general partner may be operating a separate business as an individual proprietor or may be a general partner in one or more other partnerships. In such a case the general partner should be allowed to engage in the kind of transactions involving nonpartnership property that a debtor-in-possession is authorized to conduct without notice and a hearing under section 363. Like section 363(b), the section contemplates that if the general partner desires to engage in transactions out of the ordinary course of business, permission should be requested by motion and granted only after notice and hearing. Thus, it is not intended to prevent a general partner from entering into a workout with nonpartnership creditors on a showing that the interests of the partnership and nonpartnership creditors are protected. Under this section, a general partner is prohibited from converting nonexempt assets into exempt assets. A general partner would similarly be prohibited from purchasing a new home or other extraordinary item or funding a retirement account. The burden is on the general partner to seek relief from the section. The presumption is that a large financial expense is not appropriate. However, there are always grey areas like tuition payments. Relief from the strictures of this section may not always require judicial intervention. In most of the large cases, general partners have routinely obtained permission for extraordinary expenses by seeking permission of the debtor and the creditors' committee. If a general partner proceeds to engage in a transaction involving nonpartnership property potentially detrimental to the recovery of a deficiency in the payment of partnership debts, the partnership or other party in interest may request the issuance of a protective order after notice and hearing.

(b) On request of a party in interest, including a general partner who is subject to the stay of this section, and after notice and hearing, the court may grant relief from the stay so provided, such as by terminating, annulling, modifying, or conditioning such stay for cause.

Comment

Section 566(b) authorizes the grant of relief from the automatic stay provided by the section on the request of the general partner subject to the stay or of any other party in interest. Since the stay is imposed for the benefit of the creditors of the partnership, the trustee or the partnership as debtor-in-possession would receive notice of the request for relief under this section. The court may also appropriately require notice to a creditors' committee and other parties in interest. The availability of the option raises the same kind of question as that presented when a trustee waives the automatic stay of section 362. *See Commerzanstalt v. Telewide Systems, Inc, 790 F.2d 206 (2d Cir. 1986)* (debtor's consent to appeal held not to waive operation of automatic stay since stay also protected creditors).

§ 567. Duty of trustee respecting information as to applicability of §§ 563, 565, and 566

The trustee of a partnership debtor shall maintain a list, accessible to creditors of the partnership, of the names and addresses of general partners that are protected by the stay under section 563, are subject to the duties of disclosure under section 565, and subject to restrictions on the disposition of nonpartnership property under section 566.

Comment

In the interest of minimizing inadvertent litigation against general partners and of facilitating negotiations and settlement of disputes involving general partners, section 567 requires the trustee of a partnership debtor to maintain an accessible record of general partners protected by the stay and subject to duties of disclosure and restrictions on disposition of nonpartnership property.

§ 568. Appointment of committee of general partners

On request of a party in interest the court may authorize the appointment by the United States trustee of a committee of general partners fairly representative of the interests of all general partners.

Comment

Section 568 authorizes the appointment of a committee of general partners in the interest of facilitating the collection of the partnership's receivables and other assets and the determination of appropriate allocations of the general partners' liability for the deficiency of partnership assets to pay partnership debts, Bankruptcy Judge Abram denied a request for such an appointment in *In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, 85 B.R. 13, 17 (Bankr. S.D.N.Y. 1988)*, pointing out that such an appointment was not authorized by the Bankruptcy Code and that the request did not contemplate the performance by the committee of a role comparable to that of committees appointed under section 1102. The uniqueness and refractoriness of the problems arising in partnership cases involving large numbers of general partners warrant the establishment of a mechanism for facilitating the resolution of differences and disputes among the general partners, the partnership, and the creditors of the partnership and the general partners and the development of a plan for adjusting the competing and conflicting claims and interests. Judge Abrams acknowledged a concern about "the expense of continued separate legal representation of each of the Debtor's [general] partners" and expressed a hope that "through the formation of unofficial committee or dialogue groups or the offices of the Chapter 11 trustee," the general partners would reconcile their differences through compromise so that the case might promptly come to a conclusion. *85 B.R. at 18.* In several other cases, informal committees of general partners or general partners' counsel were formed and performed the function of an unofficial general partner's committee. The section would remove doubts as to the propriety and status of a committee of general partners in a partnership case. The bankruptcy court with the assistance of the United States trustee may exercise control over the expenses of the committee chargeable against the partnership estate.

§ 569. Denial of dischargeability because of imputed misconduct or liability of copartner

Nothing contained in section 523 shall preclude discharge of an individual general partner from any debt for which such general partner is liable solely as a result of imputing to the general partner the conduct or liability of a copartner.

Comment

The Supreme Court in *Strang v. Bradner, 114 U.S. 555, 561 (1885)*, held that the liability of a general partner for fraudulent representations by a member of the partnership was not dischargeable notwithstanding the general partner's innocence of any responsibility for the perpetration of the fraud. *Strang v. Bradner* has been followed in a substantial number of cases that apply a doctrine of imputed fraud as a basis for denying dischargeability to an innocent general partner. *See* Steven H. Resnicoff, *"Is It Morally Wrong to Depend on the Honesty of Your Partner or Spouse?" Bankruptcy Dischargeability of Vicarious Debt, 42 Case Western Res. L. Rev. 147 (1992)*. The innocent general partner's sharing in the fruits of the fraudulent conduct was emphasized as a factor in the decision in *Strang v. Bradner*, but under the case law constituting the progeny of the decision the denial of discharge has not depended on a showing of receipt by the general partner of the benefits of the fraud. *See, e.g., Bancboston Mtg. Corp. v. Ledford (In re Ledford), 127 B.R. 175,181-85 (M.D. Tenn. 1991), aff'd, 970 F.2d 1556 (6th Cir. 1992)* (general partner's fraud imputed to innocent general partner for the purpose of determining dischargeability of partnership creditor's claim). The Ad Hoc Committee on Partnerships in Bankruptcy agrees with Professor Resnicoff's conclusion that '[t]he *Strang* doctrine serves no significant public policy" and concurs in his recommendation for legislative excision of the doctrine. This proposed section would apply in Chapter 7, 11, 12, and 13 cases. It would provide no basis for a discharge of liability of a general partner for fraud or misconduct specified in section 523.

CHAPTER 7-LIQUIDATION

SUBCHAPTER II–COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

§ 723. Repeal of § 723.

Section 723 is repealed.

Comment

The repeal of section 723 is necessary to eliminate the overlap with section 562, which supersedes section 723.

has been converted to this chapter under section 1112, 1208, or 1307 of this title, a claim allowed under section 502(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

Comment

The rules governing distribution in Chapter 7 cases would be subject under the proposed amendment of section 726(b) to accommodate the special considerations involved in partnership cases.

CHAPTER 11-REORGANIZATION

SUBCHAPTER 11--OFFICERS AND ADMINISTRATION

§ 1111. Claims and interests

(b)

(3) Except as otherwise provided in a confirmed plan of a partnership debtor or the order confirming such a plan, a general partner is not liable on a nonrecourse claim against the partnership except to the extent the general partner is personally liable on such claim under applicable nonbankruptcy law.

Comment

Subparagraph (3) is not intended to preclude a general partner's liability on a contractual guaranty to a lender executed by the general partner or to a liability arising out of the general partner's fraud, waste, or tortious conduct. Section 1111(b) clarifies the Congressional intent that nonrecourse debt of a partnership does not become a liability of the general partners. Since the holders of nonrecourse claims are entitled to be classified as unsecured creditors of the partnership in the calculation of the deficiency of assets in a partnership case to pay all partnership debts, the nonrecourse liability of the general partners cannot be disregarded in the formulation and implementation of a partnership plan. The formulation of a confirmation plan when there are nonrecourse claims in a partnership case poses a formidable challenge to the proponents. *See, e.g.*, *In re Greystone III Joint Venture, 102 B.R. 560 (Bankr. W.D. Tex. 1989), aff'd, 127 B.R. 138 (W.D. Tex. 1990),* where such a plan was confirmed, but a liquidation analysis was not required because all creditors other than an undersecured creditor with a nonrecourse claim supported the plan. The order confirming the plan was subsequently reversed by the court of appeals, however, on the ground that the claim of the undersecured creditor had been improperly classified in a gerrymandered plan. *995 F.2d 1274, cert. denied, 113 S.Ct. 72 (1992). See* Randolph J. Haines, *"Cramdown: Separate Classification and Treatment of Nonrecourse Deficiency Claims," 1990 Norton Bankruptcy Law Adviser No. 4, pp. 7-9 (April 1993), commenting on John Hancock Mut. Life Ins. Co. v. Route 37 Business Park Assoc., 987 F.2d 154 (3d Cir. 1993).*

Ms. SÁNCHEZ. Also, testimony—it's actually a letter attaching the decision of a District Court in Minnesota regarding the term "debt relief agency," as defined in the appropriate U.S. Code.

[The information referred to follows:]

LETTER AND SUPPORTING DOCUMENTS FROM CHAD WM. SCHULZE, ESQUIRE, MILAVETZ, GALLOP & MILAVETZ, P.A., SUBMITTED BY THE HONORABLE LINDA SÁNCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

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April 30, 2007

The Honorable Linda T. Sanchez
Chair
Subcommittee on Commercial
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Chris Cannon
Ranking Member
Subcommittee on Commercial
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: Hearing on "The Second Anniversary of the Enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act [P.L. 109-8]: Are Consumers Really Being Protected Under the Act?", Scheduled for May 1, 2007.

Dear Chairwoman Sanchez and Ranking Member Cannon:

On behalf of Milavetz, Gallop & Milavetz, P.A., Robert J. Milavetz, Esq., Barbara N. Nevin, Esq., their counsel on the below lawsuit against the United States, Alan S. Milavetz and Chad Wm. Schulze, our clients and other Minnesota consumers, we are writing with regard to the harsh realities imposed upon consumers and attorneys by The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). We are the attorneys and plaintiffs in the Minnesota District Court case of *Milavetz, Gallop & Milavetz, et. al. v. United States*, 05-CV-2626, which specifically found:

... attorneys in the District of Minnesota are excluded from the term "debt relief agency" as defined in 11 U.S.C. Sect. 101 (12)A); as such Minnesota attorneys are relieved of any duties relating to BAPCPA-defined debt relief agencies imposed by statute.

Our exclusive interest is to seek the enactment of a fair, just and efficient bankruptcy law for consumers and the attorneys required to advise clients of the bankruptcy code. Beyond the title of the law, the BAPCPA does very little to assist the consumer or protect against the bankruptcy abuses it is designed to prevent. The time is now to take this gag that hinders freedom of speech off of bankruptcy attorneys and thereby allow us to competently and efficiently represent our clients and the consumers this law was intended to protect.

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The original sponsors of the BAPCPA believed the increase in bankruptcy filings was a product of abuse of bankruptcy rules by people who would otherwise be in a position to pay theirs debts. Bankruptcy, the bill's sponsor said, has become a system "where deadbeats can get out of paying their debt scott-free [sic] while honest Americans who play by the rules have to foot the bill."

We respectfully disagree. We disagreed 2 years ago and filed an action in Federal District Court in Minnesota, we still disagree. The bankruptcy filing rate was a symptom, not the disease. Some people do abuse the bankruptcy system, but the overwhelming number of clients we have represented in 44 years of practice are in financial distress as a result of job loss, medical expenses, death of a spouse, divorce, a family member serving overseas in the military, or a combination of those causes. In our view, the fundamental change over the last decade has been the way that credit is marketed to consumers. Credit card lenders have become more aggressive in marketing their products, and a large, very profitable, market has emerged in subprime lending. The increased risk is part of the credit card companies business model, but not the average consumer. Therefore, it should come as no surprise that as credit is extended to riskier and riskier borrowers, a greater number default when faced with a financial reversal. Nonetheless, consumer lending remains highly profitable, even under the new BAPCPA.

BAPCPA restrictions on truthful legal advice.

The BAPCPA restrictions on "debt relief agencies" limit attorneys' ability to ethically and competently advise and represent their clients and illegally restrict attorneys' First Amendment right to free speech. The BAPCPA's restrictions on "debt relief agencies," if applied to attorneys, also illegally restricts the public's right to receive information from attorneys, a right presumptively protected under the 1st Amendment of the U.S. Constitution.

The BAPCPA restrictions on "debt relief agencies" also conflicts directly with the Minnesota Rules of Professional Responsibility and the American Bar Association Model Rules of Professional Responsibility, which require attorneys to provide "competent representation" to their clients, (Minn. R. Prof. Resp. Rule 1.1, A.B.A. R. Prof. Resp. Model Rule 1.1).

Under certain circumstances it is completely appropriate, advisable, and permitted by the bankruptcy laws, to incur more debts in contemplation of a bankruptcy filing. Debt relief agencies, however, are forbidden from telling consumers how to incur debt that may prevent future bankruptcy and financial hardship to the consumer and creditors. For example, knowing that a bankruptcy filing is approaching, many debtors should be counseled pre-bankruptcy to incur new secured debt (*e.g.* a car loan) that will survive the bankruptcy, since they may be able to obtain better terms (*e.g.* a lower interest rate, or a lesser down payment) prior to their bankruptcy filing than afterward. It is likewise completely appropriate to incur some debt, such as a home equity line of credit, prior to a bankruptcy filing, since such credit terms may not be

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available after bankruptcy and in sum cases may avoid the bankruptcy filing altogether. One must ask, what is the governmental interest in prohibiting lawyers from giving truthful, non-fraudulent advice about which debts can lawfully be incurred?

The BAPCPA deems fraudulent any pre-planning advice attorneys wish to give their clients, concerning incurring indebtedness, **regardless of the intent of the debtor!** There is, however, lawful, appropriate advice that attorneys are now not allowed outside of Minnesota to give their clients about pre-planning advice.[1] Many attorneys, including the attorneys of Milavetz, Gallop & Milavetz, P.A., counsel their clients to refinance a home prior to filing bankruptcy, because their credit will worsen after filing. Such advice is not fraudulent because the mortgage will survive the filing. Also, Milavetz, Gallop & Milavetz, P.A. has had instances where its clients have been requested to co-sign student loans, for their children, which are not dischargeable. Frequently, clients will also have cars which are inoperable, and that prior to filing bankruptcy they wish to purchase a new car, with a loan which they intend to reaffirm and keep once they file bankruptcy. Client debtors are now required to pay for credit counseling and attorneys' fees prior to filing for bankruptcy. A literal reading of this portion of the law would not allow attorneys to advise clients to take these lawful steps which could enable the debtor to avoid bankruptcy altogether.

[1] Erwin Chemerinsky in his article for the 2005 National Conference of Bankruptcy Judges in the *American Bankruptcy Law Journal* states:

> New Code 526 imposes restrictions on the kind of advice such a "debt relief agency" can provide. Most of this prohibited advice would be inappropriate for other reasons, such as making misrepresentations, but one of them might be entirely appropriate: Code 526(a)(4) forbids a debt relief agency to advise an assisted person or prospective assisted person to incur additional debt in contemplation of filing for bankruptcy relief or for the purpose of paying fees for services rendered by an attorney or petition preparer in connection with the bankruptcy case.

This prohibition is particularly troubling when it might be completely legal and even desirable for the client to incur such debt. For example, there may be instances where it is advisable for a client to obtain a mortgage, to refinance an existing mortgage to obtain a lower interest rate, or to buy a new car on time. There would be no fraud in doing so if the client intended to pay such debt notwithstanding the filing of a contemplated bankruptcy case. For example, the client may intend to keep all payments fully current and to reaffirm such debt once the case is filed.

Moreover, most of an attorney's fee for handling a Chapter 13 case is paid over time through the Chapter 13 plan. But that means that at the time the case is filed, the client has incurred additional debt in contemplation of filing a bankruptcy case. Indeed, such debt was specifically incurred for the purpose of paying the fees of the attorney filing the case.

But 526(a)(4) appears to prohibit any attorney from advising a client to incur any such debt, regardless of how appropriate or advisable. The clause directly regulates the content of speech of lawyers to their clients, even when it is accurate, legal, and desirable. In addition to First Amendment considerations on this issue, there are strong public policy considerations implicated when the government restricts the type of advice attorneys can give their clients.

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Attorneys counsel their clients in many areas to allow them to pre-plan regarding future financial consequences. Tax attorneys may counsel clients to give money to charity to help avoid greater tax consequences. Family law attorneys may advise clients to take retirement deductions on their checks to minimize child support obligations. It is in the best interest of the United States Government to assure taxes are collected and that parents pay child support. The BAPCPA chills attorneys' rights to give the aforementioned advice if at any time the client has contemplated bankruptcy. Nowhere in the U.S. Constitution or case law is such a chilling effect allowed by the government on private citizens.

Pre-bankruptcy planning is an important aspect of an attorney's responsibility in advising their client who intends to file bankruptcy. Fraud involving pre-bankruptcy planning was unlawful prior to the BAPCPA and enforcement was previously left to the Courts to determine fraudulent intent.

Hindering advocacy in the legal system is inconsistent with principles of consumer protection and the proposition that attorneys should present all the reasonable and well-grounded arguments necessary for proper resolution of their clients' case. By seeking to prohibit the recommendation of certain legitimate legal strategies, and thereby truncate the presentation of such strategies to the Courts, laws restricting attorney advice to clients prevent the very speech and expression upon which courts must depend for the proper exercise of judicial power.

The BAPCPA impairs the judicial function by preventing private attorneys from advising their clients, whether to incur new debt "in contemplation of" a bankruptcy filing. By so doing, the law limits Court consideration of when debts can legitimately be incurred "in contemplation of" a bankruptcy filing, and the effect of such new debts on a debtor's repayment plans, a debtor's discharge and the bankruptcy process as a whole. The Courts and the public would have reason to doubt the adequacy and fairness of advice provided by attorneys and will have no alternative legal advocate to whom to turn for advice – all attorneys are equally muzzled from counseling their clients in the same manner.

If an attorney engages in fraudulent behavior, there are many avenues for the attorney to be reprimanded. The United States Trustee for Minnesota is an investigator of bankruptcy fraud. Lawyers' conduct is further regulated by state Rules of Professional Responsibility. Further, Bankruptcy Rule 9011 provides sanctions against attorneys for substantial abuse.

The BAPCPA threatens sanctions against attorneys who violate its provisions. The punishment for the debt relief agencies' violations of section 526(a)(4) create a chilling effect on attorney speech.[2] These sanctions will chill the behavior of attorneys who are obligated to honestly

[2]The sanctions for violations of the BAPCPA include, but are not limited to, the following:

> If an enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State--

advise their clients.

The chilling effect of the BAPCPA is a reality. The Commercial Law League of America's Bankruptcy Section recently conducted a survey to get a sense of how practitioners have reacted to BAPCPA and of how they are perceiving the benefits and detriments of the new law. The study shows the unfortunate trend, consumers paying more for a bankruptcy or going without bankruptcy legal advice. The data gathered showed:

-Most consumer practitioners surveyed increased their fees as a result of BAPCPA.
-1/3 of survey respondents shifted their client mixes as a result of BAPCPA.
-Some firms eliminated consumer debtor representation altogether, and come cut out all debtor representation.
-1/3 of survey respondents had eliminated pro bono representation as a result of BAPCPA.
-More than 12% said pro bono representation had been reduced as a result of BAPCPA.
-17% of respondents (some debtor and some representing creditors) said they would no longer handle reaffirmation agreements because of BAPCPA.

The average cost of attorneys fees for a bankruptcy has increased by 50 to 100 percent in response to the complexity of the law and reduction of the number of practitioners available to file the bankruptcies. BAPCPA also increased the court filing fees and paperwork to be completed. Again, how does the law protect the debt ridden consumer who already lack the financial viability to pay bills, and to pay for access to the bankruptcy system? This does not protect the consumer, but rather promotes insolvency.

(A) may bring an action to enjoin such violation;
(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and
(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court. that any person has violated or is violating this section, the State--(A) may bring an action to enjoin such violation;(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.(4) The district courts of the United States for districts located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may--(A) enjoin the violation of such section; or(B) impose an appropriate civil penalty against such person.
11 U.S.C. §§ 526(a)(4).

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Advertising Restrictions of the BAPCPA

The BAPCPA, as written, requires an attorney or law firm to be a "debt relief agency,"[3] providing any type of bankruptcy assistance to even a single client would require an attorney or law firm to declare in their bankruptcy advertisements: "We help people file for bankruptcy relief under the Bankruptcy Code." The disclosure requirement is overly broad. The government's sweeping definition prevents an attorney, even a creditor's attorney, from discussing or providing any information, advice or counsel to a client about bankruptcy, unless that attorney forevermore declares that he or she helps people file for bankruptcy.

Because bankruptcy is a fairly specialized field, many lawyers do not help debtors file for bankruptcy, but will refer the client to a bankruptcy attorney. In addition, many lawyers practice bankruptcy law solely on behalf of creditors. However, if a lawyer who does not normally engage in debtor bankruptcy practice, discusses even the most basic functions of the bankruptcy process with one client, that lawyer must henceforth hold him or herself out as debtors' attorneys who "helps people file for bankruptcy relief," even if that statement is false.

The BAPCPA disclosure requirements force creditors' attorneys who have discussed bankruptcy with a client to mislead the public even if that attorney does not prepare and file bankruptcy petitions. The result is that creditors' attorneys are discouraged from fully discussing a client's legal rights, unless the attorney declares himself as a bankruptcy filer.

In this case the "disclosure requirements," which allegedly serve to protect consumers from being misled about how an attorney or other person makes a debt disappear, in fact prevent the free flow of accurate information between attorney and client. Creditors' attorneys and law firms, which do not regularly practice bankruptcy, but wish to give advice to a client about debtor bankruptcy which is otherwise not deceptive, misleading or harmful, now face a choice. They can choose not to give that advice, and send their client to another lawyer who advertises as a "debt relief agency", or they can state, in all of their future bankruptcy related advertisements, that they "are a debt relief agency" and that they "...help people file for bankruptcy relief under the Bankruptcy Code." 11 U.S.C. §528 a (4).

The BAPCPA's disclosure requirements, which suppress the dissemination of concededly truthful information about entirely lawful activity is **allegedly** necessary, because of the potential effect on the nation's economy. All of the evidence from the last two years points to a contrary

[3] Only two Courts throughout the United States have held that attorneys are not covered by the Bankruptcy Code, including Section 101(12A) (4A), Section 526, 527 and 528. The Courts are the Southern District of Georgia, *In re Attorneys at Law and Debt Relief Agencies*, 2006 WL 2925199 (S.D. Ga. 8/25/06) and *Milavetz, Gallop & Milavetz v. United States*, Case No. 05-cv-2626 (D. Minn. December 7, 2006). Attorneys in 48 other states and in one district of Georgia are still required to advertise as "debt relief agencies."

effect. The amount of consumer debt continues to rise without any escape.

Instead of limiting large law firms or "bankruptcy mills", the requirements favor them. The solo attorney or smaller firm that advertises in the Yellow Pages under more than one area of practice will have more difficulty paying for the additional disclosure requirement. The two required sentences would dramatically inflate the price of an attorney's one line Yellow Pages listing.

Since these attorneys are actually advertising their bankruptcy practice, there is no potential for deception. The law also did not take into account that Yellow Pages are only published one time per year and that attorneys can not change the Yellow Pages advertisement until the next publication cycle, resulting in every bankruptcy attorney listing in the Yellow Pages to be in violation of the BAPCPA until the new advertising cycle.

The advertising restriction actually increases consumer deception, as the consumer does not know who is the non-attorney and who is a bankruptcy attorney regulated by the state bar. As part of this letter we attached a number of examples of non-attorney bankruptcy advertising and then attorney bankruptcy advertising. How is the average consumer able to know the difference between the services offered when everyone is called a debt relief agency.

The ability to file for bankruptcy and to receive a fresh start provides crucial aid to families overwhelmed by financial problems. The BAPCPA created a blunderbuss so confusing and ambiguous that very few objectives of the BAPCPA will be met. By the BAPCPA focusing on the opportunistic use of the bankruptcy system by relatively few "deadbeats" rather than fashioning a tailored remedy, the BAPCPA has crippled an already overburdened bankruptcy system.

Thank you for your time and consideration of this matter.

Sincerely,

Robert J. Milavetz, Esq.
Alan S. Milavetz, Esq.
Barbara N. Nevin, Esq.
Chad Wm. Schulze, Esq.
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CWS
Encl. Advertisements

cc: All members of the House Judiciary Subcommittee on Commercial and Administrative Law

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
05-CV-2626(JMR/FLN)

Milavetz, Gallop & Milavetz P.A., Robert J. Milavetz, Barbara N. Nevin, John Doe, and Mary Doe	)	
v.	)	ORDER
United States of America	)	

Plaintiffs ask the Court to declare portions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") unconstitutional. Defendant, United States of America ("the government") moves to dismiss for failure to state a claim upon which relief can be granted. Defendant's motion is denied; the debt relief agency sections of BAPCPA unconstitutionally impinge on attorneys' First Amendment rights.

I. Background

On April 20, 2005, BAPCPA was signed into law, and became effective on October 17, 2005. Among its terms, BAPCPA defines a new category of bankruptcy service provider called a "debt relief agency." 11 U.S.C. § 101 (12A)(2005). The law forbids debt relief agencies from doing certain things, and requires them to do others. This lawsuit challenges a number of these provisions.

BAPCPA bars a debt relief agency from advising a client "to incur more debt in contemplation" of a bankruptcy filing. 11 U.S.C. § 526(a)(4). BAPCPA further requires that debt relief agencies' advertisements declare: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy

EXHIBIT A

Code," or a substantially similar statement. 11 U.S.C. § 528(a)(4), (b)(2).

Plaintiffs are bankruptcy attorneys, their law firm, and two unnamed members of the public. Their attack on the statute is based on the First Amendment to the United States Constitution. They allege BAPCPA's debt relief agency provisions are unconstitutional as applied to them. They, initially, claim BAPCPA's regulation of attorneys' advice violates the First Amendment. Next, they claim BAPCPA's advertising requirements contravene the First Amendment.[1] Ultimately, they contend Congress did not intend the debt relief agency requirements to apply to attorneys. The government moves to dismiss plaintiffs' First Amendment claims pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). The government's motion is denied.

II. Discussion

A. Motion to Dismiss

A Rule 12(b)(6) motion to dismiss must be denied unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. See Murphy v. Lancaster, 960

[1]In a footnote, the government asks whether plaintiffs have standing to bring these claims, since they are in no danger of immediate harm. The government's query is misplaced; plaintiffs claim BAPCPA's debt relief agency sections both stifle and compel their speech, in violation of the U.S. Constitution. First Amendment jurisprudence makes clear that a claim that a law has a potential chilling effect on speech establishes standing. Virginia v. Am. Booksellers Ass'n, 484 U.S. 383, 392 (1988).

F.2d 746, 748 (8th Cir. 1992). In considering such a motion, the court construes the complaint, and all of its reasonable inferences, most favorably to plaintiff. Westcott v. City of Omaha, 901 F.2d 1486, 1488 (8th Cir. 1990).

B. Unnamed Plaintiffs

_____The complaint purports to set out the claims of two unnamed parties: John Doe and Mary Doe. The government denies there is any legal basis for anonymous plaintiffs in this lawsuit. Indeed, Fed. R. Civ. P. 10(a) is explicit: a complaint "shall include the names of all the parties." Notwithstanding Rule 10(a), plaintiffs claim their case falls within a limited realm of cases in which other interests - i.e., privacy and concern about embarrassment - outweigh the public's interest in open disclosure. Plaintiffs are incorrect.

There is a strong presumption against allowing parties to use a pseudonym. See, e.g., Doe v. Blue Cross & Blue Shield United of Wisconsin, 112 F.3d 869, 872 (7th Cir. 1997); Doe v. Frank, 951 F.2d 320, 323-24 (11th Cir. 1992); Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe, 599 F.2d 707, 712-13 (5th Cir. 1979). The reasons are obvious and compelling: identification of litigants is recognized as important in a public proceeding. See Blue Cross, 112 F.3d at 872. A party who invokes the judicial powers of the United States invites public scrutiny. "The people have a right to know who is using their courts." Id.

Limited exceptions to the party-publicity rule exist. Case law has recognized three factors which, if present, might support anonymity. They have been found when "(1) plaintiffs seeking anonymity were suing to challenge governmental activity; (2) prosecution of the suit compelled plaintiffs to disclose information 'of the utmost intimacy;' and (3) plaintiffs were compelled to admit their intention to engage in illegal conduct, thereby risking criminal prosecution." Doe v. Stegall, 653 F.2d 180, 185 (5th Cir. 1981) (quoting Wynne & Jaffe, 599 F.2d at 712-13). Although the listed factors are not exhaustive, they provide valuable guidance.

While the first factor is present here, the third is not. Plaintiffs argue their "wish to obtain legal advice from [plaintiff] attorneys . . . about prebankruptcy planning and filing bankruptcy" (1st Am. Compl. ¶ 10) suffices for the second factor. According to the Doe parties, the "financial situations of private citizens [are] clearly a matter of utmost intimacy, especially when they feel the need to seek advice about bankruptcy." (Pl.'s Brief 23).

Certainly, those facing bankruptcy are in financial straits; but that does not resolve the issue. Plaintiffs offer no case law to support their claim that merely seeking bankruptcy or financial advice is the kind of intimate personal information typically protected by the court. Bankruptcy is a public proceeding; the Doe plaintiffs are disclosing no medical information or deeply personal questions surrounding human reproduction or matters of that nature.

The Court finds the bankruptcy-seeking plaintiffs' interest in their financial privacy is outweighed by the public's stronger interest in maintaining open trials. Accordingly, the Doe plaintiffs shall amend their complaint to include their real names within 10 days of the date of this Order, or their claims will be dismissed.[3]

C. Constitutional Challenges

1. Attorney Advice: Section 526(a)(4)

Plaintiffs claim BAPCPA's § 526(a)(4), titled "[r]estrictions on debt relief agencies," has "a chilling effect upon lawyers," in violation of their First Amendment rights. (1st Am. Compl. ¶ 39.) Section 626(a)(4) states:

> A debt relief agency shall not . . . advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

11 U.S.C. § 526(a)(4).

The parties disagree as to the standard of review applied to the constitutional analysis of this section. Plaintiffs claim the standard of review for a restriction on lawful and truthful attorney advice is strict scrutiny. The government replies that § 526(a)(4)'s restrictions are merely a species of ethical regulation, invoking the more lenient standard outlined in Gentile v. State Bar of Nev., 501 U.S. 1030 (1991). Under Gentile, the Court would balance the First Amendment rights of attorneys against the government's legitimate interest in regulating the activity in question, and then determine whether the regulations impose "only narrow and necessary limitations on lawyers' speech." Id. at 1075. The Court rejects the government's proposed standard.

The "ethical rule" of which the government speaks appears to exist only in its pleadings; the statute discloses no quasi-religious or ethical principle. The government "cannot foreclose the exercise of constitutional rights by mere labels." See NAACP v. Button, 371 U.S. 415, 429 (1963). While the section is certainly a rule, nothing in § 526 alludes to ethics. The section is titled "Restrictions on debt relief agencies," and plainly prohibits certain acts. The advice the Section forecloses may be potentially advantageous to creditors, but this does not make it equivalent to ethics either in logic or in law.

When fairly viewed, the Court finds § 526(a)(4) to be a content-based regulation of attorney speech -- it restricts attorneys from giving particular information and advice to their clients. Attorneys are forbidden to advise their clients concerning an entire subject - incurring more debt in contemplation of filing for bankruptcy. This is a plain regulation of speech.

Beyond this, the forbidden speech trenches on two other important areas of concern.

First, the lawyer's advice to take on certain additional financial obligations in contemplation of bankruptcy may well be in the client's best interest.[2] A lawyer's highest duty is to the client, and the statute's forbidden advice may indeed be helpful to the client. Secondly, this statute does not restrict false statements - arguably implicating some "ethical" precept - it forbids truthful and possibly efficacious advice. If this is the government's view of legal ethics, it is a form of ethics unfamiliar to the Court.

As the United States Supreme Court has explained, "[g]overnment action that stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes th[e] essential [First Amendment] right[s]" of private citizens. Turner Broad. Sys. v. FCC, 512 U.S. 622, 641 (1994). For this reason, "governmental control over the content of messages expressed by private individuals" is unconstitutional except in narrow circumstances. Id.

[2] For example, it may be in the client's interest to obtain or refinance a home mortgage prior to filing bankruptcy, because one who has declared bankruptcy may well be denied a lower interest rate after the filing. If the client gets a lower rate mortgage, the refinanced mortgage may have smaller payments which could forestall, or even prevent the bankruptcy in the first place. Similar arguments can be made concerning automobile loans, or in cases where a client needs to co-sign undischargeable student loans. See Hersh v. United States, 347 B.R. 19, 24 (N.D. Tex. 2006).

As the Court finds § 526(a)(4) to be a content-based restriction on protected speech, it is subject to strict scrutiny. Id. Such a restriction can only survive if (1) narrowly tailored to achieve (2) a compelling state interest. United States v. Playboy Entm't Group, Inc., 529 U.S. 803, 813 (2000). The Court finds the government has failed to meet its burden on the first point - § 526(a)(4) is not narrowly tailored.

The government suggests § 526(a)(4) advances two compelling interests. First, it asserts an interest in protecting creditors. According to the government, § 526(a)(4)'s prohibition discourages prospective bankrupts from accumulating debt in a particular fashion, thus deterring debtors from "gaming" the means test by improperly enlarging pre-existing debt, thereby diluting the assets of the bankruptcy estate otherwise available to creditors. Second, it claims § 526(a)(4) protects debtors from attorneys who might lead them to abusive practices which could ultimately result in a denial of discharge of debts under § 523(a)(2)(c). Finally, the government argues that § 523(a)(2)(c) protects the integrity of the bankruptcy system.

Even if the Court assumes the asserted interests are compelling, the restriction is not narrowly-tailored. The government claims the section is narrowly tailored because "it does not limit more speech than is necessary to accomplish this purpose." (Def.'s Brief 25.) The government is mistaken.

Attorneys have a First Amendment right - let alone an established professional ethical duty - to advise and zealously represent their clients. Legal Serv. Corp. v. Velazquez, 531 U.S. 533, 548-549 (2001). Section 526(a)(4) bars an attorney from advising a client to incur any kind of debt, including legitimate debt, in contemplation of bankruptcy. The lawyer has no duty to assist creditors - who are scarcely without their own resources, and may indeed have contributed to the potential-bankrupt's straits by making credit easy to obtain. The attorney's only duty is to the client, and to the law.

Incurring debt on the eve of bankruptcy can scarcely be considered malum in se. To the contrary, for some individuals incurring further obligations, even those which must be adjusted or set aside in the bankruptcy, may be financially prudent. "For example, there may be instances where it is advisable for a client to obtain a mortgage, to refinance an existing mortgage to obtain a lower interest rate, or to buy a new car" before filing for bankruptcy. Erwin Chemerinksy, Constitutional Issues Posed in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 79 AM. BANKR. L.J. 571, 578 (2005). If a client intends to reaffirm the debt after filing bankruptcy, there is no prejudice to the bankruptcy process. BAPCPA's § 526(a)(4) limitation on speech extends beyond any need to protect the bankruptcy process.[3] A lawyer who represents consumers contemplating bankruptcy bears the duty of zealous representation. Conversely, Congress does not have the power "to effect [a] serious and fundamental restriction on advocacy of attorneys." See Velazquez, 531 U.S. at 534. If upheld, this law would prevent lawyers from adequately and competently advising their clients. As such, it unconstitutionally impinges on expressions protected by the First Amendment of the Constitution.[4]

2. Advertising: Section 528(a)(4), (b)(2)

Plaintiffs challenge BAPCPA's advertising disclosure requirements, claiming § 528 violates their First Amendment rights. This section requires a denominated class, termed "debt relief agencies," to include particular, or substantially similar, language in their advertisements. Congress has prescribed that such agencies declare: "We are a debt relief agency. We help

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[3]Even under the more lenient Gentile standard, § 526(a)(4) fails. Gentile's balancing test allows the law to impose "only narrow and necessary limitations on lawyers' speech." 501 U.S. 1030, 1075 (1991); see also Hersh, 347 B.R. at 24-25; Olsen v. Gonzales, 350 B.R. 906, 916 (D. Or. 2006); Zelotes v. Martini, 2006 WL 3231423 *4 (D. Conn. 2006).

[4]Plaintiffs further claim § 526(a)(4) is unconstitutionally vague and overbroad. The United States Supreme Court has expressed a strong preference for as-applied, as opposed to facial, challenges to the constitutionality of federal laws. Sabri v. United States, 541 U.S. 600 (2004). The Court finds this law unconstitutional as applied, and declines to expand its inquiry and consider whether it is also vague and overbroad.

people file for bankruptcy relief under the Bankruptcy Code." 11 U.S.C. § 528(a)(4), (b)(2).

Here again, the Court must determine the appropriate standard of review. The choice turns on whether the statute regulates deceptive or truthful advertising. Statutes regulating deceptive commercial speech need only withstand rational basis review. Zauderer v. Office of Disciplinary Counsel of the S.Ct. of Ohio, 471 U.S. 626, 651-52 (1985). But restrictions on non-deceptive advertising must employ means that directly advance a substantial government interest. Cent. Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York, 447 U.S. 557, 566 (1980).

The government argues that BAPCPA regulates deceptive advertising, citing evidence adduced before Congress showing "some bankruptcy lawyers did not mention in their advertisements that their ability to make 'debts disappear' derived from the use of the bankruptcy process." (Def.'s Brief 28.) Plaintiffs respond that, when Congress imposed these requirements on all advertisements of bankruptcy assistance, it mandated a blunderbuss which strikes truthful, as well as false or deceptive advertising. The Court agrees.

With very few exceptions, any party advertising debt relief services must include § 528's statutory statement. The present lawyer-plaintiffs advertise themselves as bankruptcy attorneys in newspapers, telephone directories, television, radio, and the internet. There is no evidence, however, suggesting their bankruptcy assistance advertisements are deceptive in any regard. Even assuming some debt relief agencies advertise an ability to make "debts disappear," there is no showing such a statement is deceptive. Under these circumstances, the Court finds it appropriate to analyze this question by applying intermediate scrutiny. See Zauderer, 471 U.S. at 641.

The government may only regulate truthful bankruptcy assistance advertisements if: (1) the regulation directly advances (2) a substantial government interest, and is (3) "narrowly drawn." Cent. Hudson, 447 U.S. at 566; Zauderer, 471 U.S. at 641. The Court finds that BAPCPA's § 528 advertising requirements fail to directly advance the government's purported substantial interest and are not narrowly drawn.

The government contends advertising, absent the compulsory statements, may mislead the lay community into thinking debts can be erased without payment or filing for bankruptcy. The government claims §§ 528(a)(4) and (b)(2) protect against consumer deception "by alerting [them] that a lawyer may use bankruptcy as a means to help them." (Def.'s Brief 28.) Setting aside the implausibility of anyone actually believing in a magic wand capable of making debt go away, it is most unlikely that the insertion of the statement "We are a debt relief agency, we help people file for bankruptcy relief under the Bankruptcy Code" prevents consumer deception; it may well increase it.

The term "debt relief agency" is simply a legislative contrivance. The public is more likely to be confused by an advertisement containing this Congressionally-invented term than one which advertises the services of a bankruptcy attorney.

Beyond this, however, the term "debt relief agency" is almost all-encompassing. It instantly swallows all persons who engage in "bankruptcy assistance," attorneys and non-attorneys alike. Congress's merger of both attorneys and non-attorneys is, itself, likely to confuse the public. There are many non-trivial differences between an attorney's services to his or her clients, and services non-lawyers are permitted to offer. Unlike those who only restructure debt, or perhaps provide bankruptcy forms, attorneys give legal advice and actually represent debtors in bankruptcy proceedings. The requirement that parties so dissimilarly-placed must use the same mandated disclosure statement is likely to cause consumer confusion. In this respect, § 528 fails to directly advance the government's stated interest in clarifying bankruptcy service advertisements.[5]

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[5]At oral argument, the government's counsel acknowledged areas where the statute is vague. As an example, it appears that the quantum of bankruptcy advice a lawyer offers may require some attorneys to publish the mandated language and others not. The statute makes no distinction between a lawyer who only occasionally has a client facing bankruptcy and those who do so regularly. Quaere: does a 500-person law firm having a single lawyer who regularly does bankruptcy work have to put the disclaimer on every piece of the firm's advertising?

Section 528's advertising requirement is also not narrowly drawn. The narrowly drawn standard is "something short of a least-restrictive means standard." Bd. of Tr. of the State Univ. of New York v. Fox, 492 U.S. 469, 477 (1989). A narrowly drawn regulation designed to prevent deception "may be no broader than reasonably necessary to prevent the 'perceived evil.'" In re R.M.J., 455 U.S. 191, 203 (1992). Section 528's language not only regulates misleading advertisements – those suggesting debts can disappear – it binds all who advertise bankruptcy services. This sweeping regulation goes beyond whatever problem it was designed to address. It broadly regulates absolutely truthful advertisements throughout an entire field of legal practice. The government has failed to show that this restriction on attorneys' commercial speech is justified. As applied to attorneys, this section of BAPCPA fails constitutional scrutiny. Thus, the government cannot prevail on its motion to dismiss.

D. The "Debt Relief Agency" Definition

Plaintiffs ask the Court to find attorneys beyond the scope of a BAPCPA "debt relief agency." According to the statute,

> [t]he term 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110.

11 U.S.C. § 101 (12A). This section, of course, makes no direct reference to either "attorney" or "lawyer." It does include the term "bankruptcy petition preparer," which, by definition,

expressly excludes attorneys and their staff. See 11 U.S.C. § 110(a)(1)(2006). According to plaintiffs, the omission of any reference to attorneys or lawyers, while including a term which excludes attorneys, shows Congress must have intended to exclude attorneys from the "debt relief agency" definition. They also claim it would be absurd for attorneys to provide a statement telling their clients they have a right to an attorney, and that only attorneys can provide legal advice as required for debt relief agencies under 11 U.S.C. § 527(b).[6]

The government claims the statute includes attorneys because legal representation is included in "bankruptcy assistance," statutorily defined as:

> any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

11 U.S.C. § 101 (4A).

At first glance, this language might include attorneys. But the glance is deceiving: the statute contains a rule of construction for the term "debt relief agency." The statute provides that nothing in §§ 526, 527, and 528 - those sections imposing requirements on debt relief agencies - shall:

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[6]At least one court has found these arguments persuasive, holding that debtor attorneys are not "debt relief agencies." In re Attorneys at Law and Debt Relief Agencies, 332 B.R. 66, 69 (Bankr. S.D. Ga. 2005).

> be deemed to limit or curtail the authority or ability . . . of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State.

11 U.S.C. § 526(d)(2)(A).

If lawyers are placed within the ambit of § 101 (4A), the placement conflicts with § 526(d)(2)(A). The conflict would exist because states would be deprived of their ability "to determine and enforce qualifications for the practice of law." If BAPCPA's debt relief agency sections apply to attorneys, it means Congress has taken upon itself the authority to determine the advice attorneys can give their clients and what attorney advertisements must say, thereby infringing on the state's traditional role of regulating attorneys. See Leis v. Flynt, 439 U.S. 438, 442 (1979) ("Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States.")

This view is supported by the doctrine of constitutional avoidance. This doctrine counsels that, in construing a statute for ambiguity, the Court must opt for a construction which avoids grave constitutional questions. Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988). The Court perceives a clear ambiguity in this statute – on one hand it appears to regulate a lawyer's practice; on the other, such regulation is specifically reserved to the states. As outlined above, these sections would be unconstitutional if applied to attorneys. For these reasons, the Court finds §§ 526, 527 and 528 do not apply to attorneys.

VI. Conclusion

The Court finds BAPCPA sections 526(a)(4) and 528(a)(4), (b)(2) are unconstitutional as applied to attorneys. Moreover, the Court finds the debt relief agency provisions of BAPCPA inapplicable to attorneys. Therefore, the government's motion to dismiss [Docket No. 13] is denied.

IT IS SO ORDERED.

Dated: December 7th, 2006

s/ James M. Rosenbaum
JAMES M. ROSENBAUM
United States Chief District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
05-CV-2626(JMR/FLN)

Milavetz, Gallop & Milavetz P.A., Robert J. Milavetz, Barbara N. Nevin, John Doe, and Mary Doe	)	
v.	)	ORDER
United States of America	)	

This matter came before the Court on February 26, 2007, on plaintiffs' motion for summary judgment. The Court had previously considered the merits of plaintiffs' claims in the face of defendant's motion to dismiss. The Court denied the United States' motion for dismissal in its Order, dated December 7, 2006 [Docket No. 32]. At that time, the Court found certain portions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") unconstitutional and/or inapplicable as applied to attorneys. The United States opposes plaintiffs' present motion for summary judgment.

Based on the files, records, and proceedings herein, and for the reasons set forth at the hearing and elucidated in the Court's December 7, 2006 Order, IT IS ORDERED that:

1. Plaintiffs' motion for summary judgment [Docket No. 37] is granted.

2. BAPCPA's Title 11 U.S.C. Sections 526(a)(4) and 528(a)(4) and (b)(2) are declared unconstitutional, as applied to attorneys in the District of Minnesota.

EXHIBIT B

3. The Court finds that attorneys in the District of Minnesota are excluded from the term "debt relief agency," as defined in 11 U.S.C. § 101(12A); as such, Minnesota attorneys are relieved of any duties relating to BAPCPA-defined debt relief agencies imposed by that statute.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 19th, 2007

s/ James M. Rosenbaum
JAMES M. ROSENBAUM
United States Chief District Judge

HOME AND FAMILY BILLS
The Power of Negotiations

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- Home Equity
- Debt Consolidation
- Home Purchase
- Auto Loan
- Payday Loan

Mortgage Calculators

- Mortgage Calculator
- Payment Calculator
- Loan Calculator
- Amortization Calculator
- Loan Calculator Plus

Mortgage FAQs

- Home Refinance
- Home Equity
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1 Yr ARM	5.47 %	0.03 %
5/1 ARM	5.93 %	0.01 %
30 Yr Tres	4.89 %	-0.04 %
Fed Prime	8.25 %	0.00 %

Debt Consolidation FAQs

Home » Mortgage FAQs » Debt Consolidation FAQs

1 What are debt consolidation loans?

Debt consolidation loans are loans that combine the majority of your outstanding debt into one easy to make payment. The debt consolidation loan programs are in place to lower the monthly expenses of the participants and ease the financial burden they are under. Rather than have several payments to be made to several creditors each month, you have one payment to a single company. This may or may not increase the time that you have to pay for these debts. On occasion a company may offer a second mortgage loan or home mortgage refinance loan to consolidate debts. This is dependent upon the amount of equity that you have in your home and the total amount of debts that you have outstanding.

2 What is a debt relief agency?

A debt relief agency, sometimes called debt consolidation services, is a consumer based company that aids people in reducing and eliminating their debt. Most often this type of company is used when the participant is in or close to default of their outstanding debts. This is not to be confused with a debt consolidation loan. Debt relief agencies do not provide loans. Instead they work with the creditors that you have to reduce the amount of interest on the debt to make it easier for you to repay. A debt relief agency employs credit professionals, most often they have worked for credit card or loan companies in the past, who know how to talk to the creditors and get them to suspend the interest payments on the accounts. Most of the times the debt relief agencies can only help you, if you agree to not use the credit card or obtain any more loans until you have paid off the current amount of debt.

3 What is bankruptcy and should I use it?

When dealing with debt bankruptcy is the very last resort. The issue with bankruptcy is the fact that all the information stays on your credit report for ten years which makes it very difficult to obtain credit or purchase a home. It is not impossible, but very difficult. Currently bankruptcy is not the best choice in any way shape or form. The laws and rules regarding bankruptcy changed and now it is nothing more than a repayment plan designed to get you out of debt while still paying the money that you owe.

Top

4 Can I see what my credit report contains?

As a consumer and credit holder you have a right to see what is contained in your credit report. All three major reporting agencies are required to provide you with one free report for each and every year. The trick is that you must ask for the report, it is not sent to you automatically. Likewise, if you are denied credit for any reason you are eligible to receive a credit report to examine it and then dispute any wrong entries.

5 How is my credit score figured and how does it affect my chances of getting credit?

Your credit score is figured on several key elements. For one the amount of time that you have spent on your current job, the longer you spend the better the rating. Also the amount of credit that you have extended to you at the present time has an affect on the score. If you have several open accounts with balances then the score will go down depending on your annual income. Then you must take into consideration the amount of bad marks that your report has. Most of the companies that report to the credit agencies will let them know not only about the payments that are being made, but also the late payments and so on that come about. Also, the number of times that your credit report is viewed by companies has an affect. The more times it is viewed lower will be the score. The score on your credit report determines whether or not you will receive credit. For one, many banks and other lending institutions have a standard minimum score that they require. The score will also affect the interest rate that you receive. The lower your credit scores the higher will be the interest rate for credit and loans.

6 What information is collected and sold by consumer reporting agencies?

The three main consumer reporting agencies collect and sell several things in an effort to help companies decide whether or not to extend you credit. First of all they collect your personally identifiable information, including birth date, social security number, address, and employment history. This is to provide the buffer for lending institutions so that they can be sure that you are being truthful in every manner on your application. They also collect payment histories. For all of your debts they keep record of payments made and whether they were late or accrued late charges. Late payments adversely affect the ability to obtain credit. Public records are also collected. These records include liens, foreclosures, and bankruptcies that have been filed. It can take as long as ten years for these matters to be dropped from your report.

7 How can I find a debt relief agency or debt consolidation services?

Look in your local telephone book under "credit counseling service." You can also look online. Just go to your favorite search engine and type in "debt consolidation company USA."

Top

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The U. S. Bankruptcy Code provides that everyone has the right to represent themselves and file on their own behalf, pro se. The law does not require you to have a bankruptcy attorney represent you in any State for your personal bankruptcy. Our services are available nationwide. All details for bankruptcy filing can be handled in the privacy and convenience of your home. We are non-attorney Bankruptcy Petition Preparers as defined by the U.S. Bankruptcy Code (USC Chapter 1, Sec. 110). We cannot offer or provide legal advice. We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.

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- Overnight service available.
- Your bankruptcy documents are prepared by experienced and trained bankruptcy petition preparers.

Chapter 7 Bankruptcy

Chapter 7 is known as "straight" bankruptcy or "liquidation." In a bankruptcy case under Chapter 7, you file a petition asking the court to discharge your debts. The basic idea in a Chapter 7 bankruptcy is to wipe out (discharge) your unsecured debts in exchange for your giving up certain property which exceeds certain limits called "exemptions". "Exempt" property is property which the law allows you to keep when you file bankruptcy. In most cases, all of your property will be exempt. But property which is not exempt is sold, with the money distributed to creditors. If you want to keep property like a home or a car and are behind on the payments on a mortgage or car loan, a Chapter 7 may not be your best choice. That is because Chapter 7 bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt.

Chapter 13 Bankruptcy

Chapter 13 is called "debt adjustment" or a "reoganizational Plan." In a Chapter 13 case, you are required to make one monthly payment to the Chapter 13 Trustee, to repay some portion of the debt you have. You file a "plan" showing how you will pay off some of your past-due and current debts over three to five years.

"We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code."

The New Bankruptcy Law

Here are some of the major changes you should know about.

Now that the new bankruptcy law is in effect, the landscape has changed for those who are considering bankruptcy. All debtors will have to get credit counseling before they can file a bankruptcy case - and additional counseling on budgeting and debt management before their debts can be wiped out. Some filers with higher incomes won't be allowed to use Chapter 7, but will instead have to repay at least some of their debt under Chapter 13. And, because the law imposes new requirements on lawyers, it will be tougher to find an attorney to represent you in a bankruptcy case.

Here are some of the most important changes.

Counseling Requirements

Before you can file for bankruptcy under either Chapter 7 or Chapter 13, you must complete credit counseling with an agency approved by the United States Trustee's office. (To find an approved agency in your area, go to the Trustee's website, www.usdoj.gov/ust, and click "Credit Counseling and Debtor Education.")

Counseling is required even if it's obvious that a repayment plan isn't feasible or you are facing debts that you find unfair and don't want to pay. You are required only to participate, not to go along with any repayment plan the agency proposes. However, if the agency does come up with a repayment plan, you will have to submit it to the court, along with a certificate showing that you completed the counseling, before you can file for bankruptcy.

Once your bankruptcy case is over, you'll have to attend another counseling session, this time to learn personal financial management. Only after you submit proof to the court that you fulfilled this requirement can you get a bankruptcy discharge wiping out your debts. (The website above also lists approved debt counselors.)

Restricted Eligibility for Chapter 7

Under the old rules, most filers could choose the type of bankruptcy that seemed best for them - and most chose Chapter 7 over Chapter 13. The new law will prohibit some filers with higher incomes from using Chapter 7.

How High is Your Income?

Under the new rules, the first step in figuring out whether you can file for Chapter 7 is to measure your "current monthly income" against the median income for a family of your size in your state. Your "current monthly income" is not your income at the time you file, however: It is your average income over the last six months before you file. For many people, particularly those who are filing for bankruptcy because they recently lost a job, their "current monthly income" according to these rules will be much more than they take in each month by the time they file for bankruptcy.

Once you've calculated your income, compare it to the median income for your state. (You can find median income tables, by state and family size, at the website of the United States Trustee, www.usdoj.gov/ust; click "Means Testing Information.")

If your income is less than or equal to the median, you can file for Chapter 7. If it is more than the median, however, you must pass "the means test" - another requirement of the new law - in order to file for Chapter 7.

The Means Test

The purpose of the means test is to figure out whether you have enough disposable income, after subtracting certain allowed expenses and required debt payments, to make payments on a Chapter 13 plan.

To find out whether you pass the means test, you start with your "current monthly income," calculated as described above. From that amount, you subtract both of the following:Certain allowed expenses, in amounts set by the IRS. Generally, you cannot subtract what you actually spend for things like transportation, food, clothing, and so on; instead, you have to use the limits the IRS imposes, which may be lower than the cost of living in your area.

If your total monthly disposable income after subtracting these amounts is less than $100, you pass the means test, and will be allowed to file for Chapter 7. If your total remaining monthly disposable income is more than $166.66, you have flunked the means test, and will be prohibited from using Chapter 7.

So what about those in the middle? They have to do some more math. If your remaining monthly disposable income is between $100 and $166.66, you must figure out whether what you have left over is enough to pay more than 25% of your unsecured, non-priority debts (such as credit card bills, student loans, medical bills, and so on) over a five-year period. If so, you flunk the means test, and Chapter 7 won't be available to you. If not, you pass the means test, and Chapter 7 remains an option.

State Exemptions Aren't Available to Recent State Residents

Under the old bankruptcy law, the personal property debtors were allowed to keep in Chapter 7 bankruptcy was determined by the laws of the state where they lived (as long as they lived there for at least three months). Under the new law, you must live in a state for at least two years prior to filing in order to use that state's exemption laws. Otherwise, you must use the exemptions available in the state where you used to live. Similar rules apply to homestead exemptions, which determine how much equity in a home you can keep when filing for Chapter 7 bankruptcy. However, to use your new state's homestead exemption, you must live there for at least 40 months.

Because exemption amounts vary widely from state to state, these new residency requirements could make a big difference in the amount of property you get to hold on to. For example, if you recently moved from California to Nevada and you have a fairly valuable car, you might want to wait to file for Chapter 7: Once you've been in Nevada for two years, you can claim its $15,000 exemption for motor vehicles. If you have to use California's exemptions, you can keep only $2,300 worth of equity.

Increased Costs and Delays in Filing

The new law requires most people to get credit counseling from a nonprofit agency before filing for bankruptcy. In addition, debtors have to complete a course on personal financial management before completing either Chapter 7 or Chapter 13 bankruptcy.

Another roadblock delays people who had not yet filed a tax return for a recent year. Anyone filing for Chapter 7 bankruptcy has to provide a federal tax return for the most recent tax year; those filing for Chapter 13 have to be current on tax returns for the previous four years.

[Chapter 7] [Chapter 13] [F.A.Q] [Intake Form] [Request Info]
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Source: CNN Money

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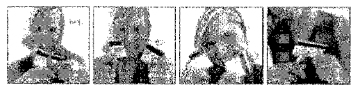

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First Name *

Last Name *

Home phone *

Best Time to Contact === Select value ===

State * === Select value ===

E-mail *

Total Unsecured Debt * (Minimum **$10,000.00**)

Employeed === Select value ===

Are you currently past due on your credit cards? === Select value ===

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- Veradae B.

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- **Proven Debt Reduction**
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The New Bankruptcy Law

Under the old rules, people who filed under Chapter 13 had to devote all of their disposable income -- what they had left after paying their actual living expenses -- to their repayment plan. The new law adds a wrinkle to this equation: Although Chapter 13 filers still have to hand over all of their disposable income, they have to calculate their disposable income using allowed expense amounts dictated by the IRS -- not their actual expenses -- if their income is higher than the median in their state (see "Restricted Eligibility for Chapter 7," above). These expenses are often lower than actual costs.

What's worse, these allowed expense amounts must be subtracted not from the filer's actual earnings each month, but from the filer's average income during the six months before filing. This means that debtors may be required to pay a much larger amount of "disposable income" into their plan than they actually have to spare every month -- which, in turn, means that many more Chapter 13 plans will fail.

Property Must Be Valued at Replacement Cost

Under the old law, Chapter 7 filers could value their property at what they could sell it for in a "fire sale" or auction. This meant that used furniture, hobby items, cars, heirlooms, and other property a debtor might want to keep were typically assumed to have little value -- and, therefore, that it often fell well within the "exempt property" categories offered by most states. (Exempt property is property that cannot be taken by creditors or the trustee -- you are entitled to keep it.)

Under the new law, you must value your property at what it would cost to replace it from a retail vendor, taking into account the property's age and condition. This requirement is sure to jack up the value of property, which means more debtors stand to have their property taken and sold by the trustee.

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Restricted Eligibility for Chapter 7

Under the old rules, most filers could choose the type of bankruptcy that seemed best for them -- and most chose Chapter 7 over Chapter 13. The new law will prohibit some filers with higher incomes from using Chapter 7.

How High is Your Income?

Under the new rules, the first step in figuring out whether you can file for Chapter 7 is to measure your "current monthly income" against the median income for a family of your size in your state. Your "current monthly income" is not your income at the time you file, however: It is your average income over the last six months before you file. For many people, particularly those who are filing for bankruptcy because they recently lost a job, their "current monthly income" according to these rules will be much more than they take in each month by the time they file for bankruptcy.

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- Certain allowed expenses, in amounts set by the IRS. Generally, you cannot subtract what you actually spend for things like transportation, food, clothing, and so on; instead, you have to use the limits the IRS imposes, which may be lower than the cost of living in your area.
- Monthly payments you will have to make on secured and priority debts. Secured debts are those for which the creditor is entitled to seize property if you don't pay (such as a mortgage or car loan); priority debts are obligations that the law deems to be so important that they are entitled to jump to the head of the repayment line. Typical priority debts include child support, alimony, tax debts, and wages owed to employees.

If your total monthly disposable income after subtracting these amounts is less than $100, you pass the means test, and will be allowed to file for Chapter 7. If your total remaining monthly disposable income is more than $166.66, you have flunked the means test, and will be prohibited from using Chapter 7.

So what about those in the middle? They have to do some more math. If your remaining monthly disposable income is between $100 and $166.66, you must figure out whether what you have left over is enough to pay more than 25% of your unsecured, nonpriority debts (such as credit card bills, student loans, medical bills, and so on) over a five-year period. If so, you flunk the means test, and Chapter 7 won't be available to you. If not, you pass the means test, and Chapter 7 remains an option.

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Requirements Eased for Hurricane Victims

Following Hurricanes Katrina and Rita, the United States Trustee's office announced special enforcement guidelines for debtors affected by natural disasters. These guidelines are an effort to lessen the impact of the new law on filers who may be displaced from their homes and personal papers.

Among other things, these guidelines make the following changes for victims of natural disasters who file for bankruptcy:

- Credit counseling will not be required.
- Debtors who cannot provide required documents due to a natural disaster will not face enforcement actions.
- Trustees are to consider the income loss, increased expenses, and other effects of a natural disaster as "special circumstances" that may allow a debtor who doesn't otherwise pass the means test to qualify for Chapter 7.
- Trustees will provide alternate means for debtors to attend creditors' meetings, if necessary.
- For more on these rules, go to the website of the United States Trustee, www.usdoj.gov/ust, and click "Enforcement Guidelines for Debtors Affected by Natural Disasters."

Lawyers May Be Harder to Find -- and More Expensive

As you can see, the new law adds some complicated requirements to the field of bankruptcy. This is going to make it more expensive -- and time-consuming -- for lawyers to represent clients in bankruptcy cases, which means attorney fees are going to go up.

The new law also imposes some additional requirements on lawyers, chief among them that the lawyer must personally vouch for the accuracy of all of the information their clients provide them. This means attorneys will have to spend even more time on bankruptcy cases, and charge their clients accordingly. Some experts predict that this combination of new requirements may drive some bankruptcy lawyers out of the field altogether.

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Some Chapter 13 Filers Will Have to Live on Less

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State Exemptions Aren't Available to Recent State Residents

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Because exemption amounts vary widely from state to state, these new residency requirements could make a big difference in the amount of property you get to hold on to. For example, if you recently moved from California to Nevada and you have a fairly valuable car, you might want to wait to file for Chapter 7: Once you've been in Nevada for two years, you can claim its $15,000 exemption for motor vehicles. If you have to use California's exemptions, you can keep only $2,300 worth of equity.

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Are you in need of debt relief? Are you considering filing for bankruptcy? Before you take any steps forward, you should speak to an attorney who can advise you on the best course of action to resolve your debt. The law firm of Milavetz, Gallop & Milavetz is a debt relief agency, staffed with knowledgeable lawyers and support staff that can provide answers to all of your bankruptcy questions.

For over 43 years, our firm has been assisting individuals in need of debt relief. The word bankruptcy creates a stigma of an irresponsible individual. We know that this is not true in all cases. Many of our clients are responsible, working citizens who are in need of help because of extenuating circumstances. Whatever your situation may be, we can help.

At our various locations, our team provides bankruptcy services related to:

- Chapter 7
- Chapter 13
- Chapter 13 conversion to Chapter 7
- Emergency filings
- Foreclosures
- Property seizures
- Social security disability
- And several others

The bankruptcy laws have changed! Your bankruptcy case may be made more complex by the laws that took effect on October 17, 2005.

Do not be caught off guard by the new laws. Our attorneys and staff are up to date on the new revisions and alterations that could change the way you file for bankruptcy. To enhance your knowledge of bankruptcy and bankruptcy related matters, please review our bankruptcy center page.

Contact a bankruptcy attorney at Milavetz, Gallop & Milavetz, a debt relief agency today to discuss your case with a member of our devoted and skilled team. We can provide you with the answers you are seeking. Break free of your debt – contact us to begin the process today!

For over 43 years, the law firm of Milavetz, Gallop & Milavetz, a debt relief agency has been confidently serving clients from their offices in Minnesota, including individuals in the areas of Minneapolis. St. Paul, Edina, Coon Rapids, Brooklyn Center, Roseville, St. Cloud, the entire Twin Cities metro area, western Wisconsin including Hudson, Menomonie, and Eau Claire, and all of the surrounding areas.

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Ms. SÁNCHEZ. And, lastly for the record, I would also like to submit the infamous Form 22 with its 57 parts of inquiry that folks who are interested in filing bankruptcy claims must fill out to begin that process.

[The information referred to follows:]

OFFICIAL FORM 22A (CHAPTER 7), SUBMITTED BY THE HONORABLE LINDA SÁNCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

Official Form 22A (Chapter 7) (04/07)

In re ______________________________
Debtor(s)

Case Number: ________________
(If known)

According to the calculations required by this statement:
☐ **The presumption arises.**
☐ **The presumption does not arise.**
(Check the box as directed in Parts I, III, and VI of this statement.)

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedule I and J, this statement must be completed by every individual Chapter 7 debtor, whether or not filing jointly, whose debts are primarily consumer debts. Joint debtors may complete one statement only.

	Part I. EXCLUSION FOR DISABLED VETERANS
1	If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement. ☐ **Veteran's Declaration.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).

	Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION		
2	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 3-11.** b. ☐ Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." **Complete only Column A ("Debtor's Income") for Lines 3-11.** c. ☐ Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. **Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.** d. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.	**Column A** **Debtor's Income**	**Column B** **Spouse's Income**
3	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
4	**Income from the operation of a business, profession or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. **Do not include any part of the business expenses entered Line b as a deduction in Part V.** a. Gross receipts — $ b. Ordinary and necessary business expenses — $ c. Business income — Subtract Line b from Line a	$	$
5	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part V.** a. Gross receipts — $ b. Ordinary and necessary operating expenses — $ c. Rent and other real property income — Subtract Line b from Line a	$	$
6	**Interest, dividends and royalties.**	$	$
7	**Pension and retirement income.**	$	$
8	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child or spousal support.** Do not include amounts paid by the debtor's spouse if Column B is completed.	$	$

9	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act | Debtor $ ________ | Spouse $ _________	$	$
10	**Income from all other sources.** If necessary, list additional sources on a separate page. **Do not include** any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. Specify source and amount. a. | | $ b. | | $ Total and enter on Line 10	$	$
11	**Subtotal of Current Monthly Income for § 707(b)(7).** Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	$	$
12	**Total Current Monthly Income for § 707(b)(7).** If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.	$	

	Part III. APPLICATION OF § 707(b)(7) EXCLUSION	
13	**Annualized Current Monthly Income for § 707(b)(7).** Multiply the amount from Line 12 by the number 12 and enter the result.	$
14	**Applicable median family income.** Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _______________ b. Enter debtor's household size: __________	$
15	**Application of Section 707(b)(7).** Check the applicable box and proceed as directed. ☐ **The amount on Line 13 is less than or equal to the amount on Line 14.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. ☐ **The amount on Line 13 is more than the amount on Line 14.** Complete the remaining parts of this statement.	

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

	Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)	
16	**Enter the amount from Line 12.**	$
17	**Marital adjustment.** If you checked the box at Line 2.c, enter the amount of the income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. If you did not check box at Line 2.c, enter zero.	$
18	**Current monthly income for § 707(b)(2).** Subtract Line 17 from Line 16 and enter the result.	$

	Part V. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)	
	Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)	
19	**National Standards: food, clothing, household supplies, personal care, and miscellaneous.** Enter "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
20A	**Local Standards: housing and utilities; non-mortgage expenses.** Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	$

20B	**Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. **Do not enter an amount less than zero.** a. IRS Housing and Utilities Standards; mortgage/rental expense — $ b. Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42 — $ c. Net mortgage/rental expense — Subtract Line b from Line a.	$
21	**Local Standards: housing and utilities; adjustment.** If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below: ____ ____ ____	$
22	**Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8. ☐ 0 ☐ 1 ☐ 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
23	**Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) ☐ 1 ☐ 2 or more. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. **Do not enter an amount less than zero.** a. IRS Transportation Standards, Ownership Costs, First Car — $ b. Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42 — $ c. Net ownership/lease expense for Vehicle 1 — Subtract Line b from Line a.	$
24	**Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 23. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. **Do not enter an amount less than zero.** a. IRS Transportation Standards, Ownership Costs, Second Car — $ b. Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42 — $ c. Net ownership/lease expense for Vehicle 2 — Subtract Line b from Line a.	$
25	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	
26	**Other Necessary Expenses: mandatory payroll deductions.** Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as non-mandatory 401(k) contributions.**	$

27	**Other Necessary Expenses: life insurance.** Enter average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
28	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. **Do not include payments on past due support obligations included in Line 44.**	$
29	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$
30	**Other Necessary Expenses: childcare.** Enter the average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
31	**Other Necessary Expenses: health care.** Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance or health savings accounts listed in Line 34.**	$
32	**Other Necessary Expenses: telecommunication services.** Enter the average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
33	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 19 through 32.	$

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 19-32

34	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List and total the average monthly amounts that you actually pay for yourself, your spouse, or your dependents in the following categories. a. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total: Add Lines a, b and c	$
35	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	$
36	**Protection against family violence.** Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
37	**Home energy costs.** Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary**.	$
38	**Education expenses for dependent children less than 18.** Enter the average monthly expenses that you actually incur, not to exceed $137.50 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. **You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards**.	$
39	**Additional food and clothing expense.** Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary**.	$
40	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	$
41	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 34 through 40	$

<table>
<tr><th colspan="3">Subpart C: Deductions for Debt Payment</th></tr>
<tr><td>42</td><td>Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage debts should include payments of taxes and insurance required by the mortgage. If necessary, list additional entries on a separate page.
<table>
<tr><th></th><th>Name of Creditor</th><th>Property Securing the Debt</th><th>60-month Average Payment</th></tr>
<tr><td>a.</td><td></td><td></td><td>$</td></tr>
<tr><td>b.</td><td></td><td></td><td>$</td></tr>
<tr><td>c.</td><td></td><td></td><td>$</td></tr>
<tr><td></td><td></td><td></td><td>Total: Add Lines a, b and c.</td></tr>
</table></td><td>$</td></tr>
<tr><td>43</td><td>Other payments on secured claims. If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.
<table>
<tr><th></th><th>Name of Creditor</th><th>Property Securing the Debt</th><th>1/60th of the Cure Amount</th></tr>
<tr><td>a.</td><td></td><td></td><td>$</td></tr>
<tr><td>b.</td><td></td><td></td><td>$</td></tr>
<tr><td>c.</td><td></td><td></td><td>$</td></tr>
<tr><td></td><td></td><td></td><td>Total: Add Lines a, b and c</td></tr>
</table></td><td>$</td></tr>
<tr><td>44</td><td>Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.</td><td>$</td></tr>
<tr><td>45</td><td>Chapter 13 administrative expenses. If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.
<table>
<tr><td>a.</td><td>Projected average monthly Chapter 13 plan payment.</td><td>$</td></tr>
<tr><td>b.</td><td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</td><td>x</td></tr>
<tr><td>c.</td><td>Average monthly administrative expense of Chapter 13 case</td><td>Total: Multiply Lines a and b</td></tr>
</table></td><td>$</td></tr>
<tr><td>46</td><td>Total Deductions for Debt Payment. Enter the total of Lines 42 through 45.</td><td>$</td></tr>
<tr><th colspan="3">Subpart D: Total Deductions Allowed under § 707(b)(2)</th></tr>
<tr><td>47</td><td>Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 33, 41, and 46.</td><td>$</td></tr>
</table>

<table>
<tr><th colspan="3">Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION</th></tr>
<tr><td>48</td><td>Enter the amount from Line 18 (Current monthly income for § 707(b)(2))</td><td>$</td></tr>
<tr><td>49</td><td>Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))</td><td>$</td></tr>
<tr><td>50</td><td>Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result</td><td>$</td></tr>
<tr><td>51</td><td>60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.</td><td>$</td></tr>
</table>

Ms. SÁNCHEZ. And without objection, so ordered.

We are now going to begin a round of questioning. Members will each have 5 minutes to question the witnesses. I would ask the witnesses to be mindful of the fact that we have but little time each to ask questions, so try to be brief in your responses.

And I would like to begin with Mr. Bartlett with my first question. You've testified also before the Senate Judiciary Committee last December, and in that testimony you stated that, quote, "We need to reach consumers much sooner in the financial cycle so that credit counseling can live up to its full potential. If consumers wait until they are completely under water, counseling may not live up to its full potential."

How would you propose to reach consumers much sooner in the financial cycle? Because apparently, as we've seen from Ms. Burroughs, sometimes people with the best of intentions have to begin the bankruptcy process, and that is really when the counseling kicks in.

Mr. BARTLETT. Madam Chair, ironically one of the probably unintended or at least undiscussed outcomes of the new law is that consumers are getting to counseling earlier, but they're not getting in in a way that shows up in the statistics. We survey all the certified credit counseling agencies and we've determined that about 30,000 counseling sessions a month, additional sessions happen with these certified agencies more than were happening in prior years. And we think that is because these agencies are certified, consumers can find them on the Internet, they've been certified by the U.S. Justice Department, so it gives the consumers a much higher sense of satisfaction.

We think the other thing that is happening is that with the publicity about it, with the conversations about it, we think that consumers are increasingly aware that the earlier they get to the counseling the better they are and the easier it will be and easier to accommodate.

And then third is we as an industry, we are pushing all kinds of information to consumers to say get thee to a counselor. If you're having difficulty, then counselors can help because they can help you with your money management.

So is it going to be perfect? Is everyone going to get to a counselor early in the process? No.

Ms. SÁNCHEZ. So you believe the majority of consumers are getting the credit counseling that they need early enough in the process?

Mr. BARTLETT. No, I wouldn't say majority. I wish life were that good. I would say that a lot more today because of this new law than were prior to the law, because of the certification process and the industry is promoting it, is telling consumers to get to a counselor and we're making it available.

Ms. SÁNCHEZ. Mr. Sommer, do you have any thoughts about whether or not debtors are getting their credit counseling advice in a way that is timely given the circumstances that they're in in terms of thinking about bankruptcy?

Mr. SOMMER. Unfortunately, most debtors go to counseling only when they find out the requirement to file bankruptcy. And by then, as the counselors themselves say, hardly any of them are financially capable of doing a debt management plan.

The counseling is particularly a problem in timing when people are facing foreclosure, such as Ms. Burroughs, because it can serve as an impediment when the foreclosure sale may be very imminent. And there are courts that have said that people who get counseling on the same day as they file bankruptcy can't file bankruptcy.

So we think there are certain categories of people at a minimum who ought to be exempted from counseling when it's clear counseling can't stop a mortgage foreclosure.

Ms. SÁNCHEZ. Thank you. Mr. Bartlett, in his prepared testimony described a lawsuit filed in Connecticut in which he said the plaintiffs in this case believe that attorneys have a right under the Constitution to deceive the public, hide information from clients, or advise consumers to commit fraud by running up debts just before filing for bankruptcy to gave the means test. Are you familiar with that lawsuit, Mr. Sommer?

Mr. SOMMER. Actually, our organization is a plaintiff along with the Connecticut Bar Association in that lawsuit.

Ms. SÁNCHEZ. What would your response be to Mr. Bartlett's characterization?

Mr. SOMMER. Well, that is simply a false characterization of a lawsuit. It would be ridiculous to argue that attorneys have the right to counsel their clients to commit fraud, and we made no such argument, as the papers would demonstrate. Our argument was that professional ethics already prohibit that kind of activity. And really the provisions of the law which prohibit advice about lawful activity impair attorneys' ethical duties to fully advise their clients about lawful means of dealing with their problems.

Ms. SÁNCHEZ. Thank you. Mr. Bartlett, over the nearly 8 years that the BAPCPA was under consideration by Congress, we continuously heard that each American family was paying a $400 to $550 "bankruptcy tax" for bankruptcy filing. Since the enactment 2 years ago have interest rates dropped significantly?

Mr. BARTLETT. I don't know that they have, and I don't know that you could point to one law as either increasing or decreasing interest rates.

Ms. SÁNCHEZ. Have the costs of goods and services been lowered in response to the perceived savings resulting from the enactment of the act?

Mr. BARTLETT. I would say the cost have declined. We're running at an average of about a 1.5 million consumer bankruptcies a year prior to the law. And last year it was 537,000. We think it will be about half, about 700,000. So it would be 700,000 fewer bankruptcies.

Ms. SÁNCHEZ. But I'm specifically referring to this "bankruptcy tax" that we heard about over and over and over again. I mean, I can only tell you what my experience is. I get solicitations for credit cards in the mail every day. And the interest rates that they're asking me to pay are 24.99 percent. I think the lowest one I have recently received, and I have an excellent credit rating, I might add, was like for 19.99 percent.

I haven't seen a significant decrease in the interest rates on credit cards that are being offered as a result of the enactment 2 years ago. And yet one of the major arguments we heard over and over and over again in response to why we should support this bill was that consumers are paying this huge "bankruptcy tax" and that if we just cut down all the frivolous bankruptcy filings every consumer's interest rates are going to go down.

Mr. BARTLETT. Madam Chair, the purpose of the new law, the reform, is to stipulate that those consumers who can pay some or all of their debts and who are above the median income are expected to do so. That is exactly what's happening. And those that cannot can go into chapter 7. And that is what's happening also, about 700,000 chapter 7s. And then the—about 700,000 in bankruptcy. And the rest are not filing for bankruptcy because they can pay some or all of their debts. And that was what the law intended and that is what's happening.

Ms. SÁNCHEZ. So the argument about "bankruptcy tax" was just a specious argument then; it was never intended to save consumers money through lower interest rates?

Mr. BARTLETT. I don't think it was specious at all. I think the total savings are the total savings and those are reflected in the total cost of goods and services in the economy. If people file for bankruptcies and don't pay their debts and they could pay their debts, that is a bad thing. We think that is a bad thing if someone can pay their debts and aren't required to.

Ms. SÁNCHEZ. I'm just going to interrupt you and say I take offense at the argument that it was going to have this effect that consumers were going to pay less in interest rates if we could reduce the number of actual bankruptcy filings.

My time has expired. I would now like to recognize my distinguished Ranking Member for 5 minutes of questioning.

Mr. CANNON. Madam Chair, I'm happy to defer to Mr. Feeney, who I think has another obligation, and to the other Members of the Committee who may have other interests or commitments, and I would be happy to go last.

Ms. SÁNCHEZ. I appreciate your generosity.

Mr. Feeney.

Mr. FEENEY. I thank the Chairwoman, and I thank the Ranking Member for his hospitality.

On that last point, Mr. Bartlett, is it your position that there are dozens, hundreds, perhaps thousands of variables, including international markets, that affect interest rates on an ongoing basis and the cost of goods?

Mr. BARTLETT. Of course. There are a lot of things that set the interest rates, Chief among them the Federal Reserve. The cost of bankruptcy is a real cost and it's a cost that is spread out throughout the economy.

Mr. FEENEY. Is it your position marginally of the thousands of variables, including international variables, one variable that tends to lower in your opinion the cost of interest and the cost of goods would be relatively tight bankruptcy rules so that fewer people are availing themselves of them?

Mr. BARTLETT. I think that's correct. I think bankruptcy should be available to people that cannot pay their debts and not available to those who can, roughly speaking.

Mr. FEENEY. And in general, losses to the economy that result from, I don't want to say frivolous, but liberal bankruptcy applications, what will they tend to do to job creation for Americans, prosperity and the national economy, realizing again that it's just one of thousands of potential variables?

Mr. BARTLETT. We have two effects. If bankruptcy allows people who otherwise can pay their debts not to do so, as it did prior to this law, two things happen. One is that credit tightens up for everyone because creditors are then much stricter on offering the credit. So those that can and would pay their debts are sometimes denied and they shouldn't be.

Secondly, the costs go up. So those goods that someone purchased and didn't pay for have to be paid for by everyone else.

Mr. FEENEY. Have you seen any studies or have you reviewed any work of others or do you have an opinion as to the rough percentage of bankruptcies that come about because of poor decisions and poor understanding of financial literacy versus bad luck, people that have a bad health situation, people that get thrown out of a job. At the turn of the century if you were an expert in manufacturing buggy whips, when the automobile came along you were in some trouble. Do you have an opinion relatively what the preponderance of the burden is?

Mr. BARTLETT. The survey I've seen that is most on point to your question was done by the gold standard group of credit counselors, the National Federation of Credit Counselors. Most of their agencies are certified by the Justice Department. And they asked their consumers or their clients who would call for credit counseling, and they would ask them what do you think got you into trouble? And I think it was about 69 percent of those debtors self-identified. They said what got us into trouble was poor money management.

About 30 percent was a major loss of job or loss of income. And the rest was medical or divorce or disability. About 4 percent, something like that. So about 69 percent, according to that study, is poor money management. Other counselors I talked with confirmed that that's about the right ratio.

Now, that leaves a large group that is loss of income, and if that loss of income is permanent, well, then some kind of restructuring has to occur. If it's temporary, then lenders can figure out some way to accommodate.

Mr. FEENEY. Well, I don't think—my guess is you don't, and I don't want to blame the victim here, but a big part of the problem—you talked about early counseling and education if somebody gets into trouble and before they get above their head in hot water, but the truth is that a significant portion of the problem, perhaps the 70 percent figure, give or take, that you cited comes from lack of parents and especially our public education system early on, having people understand things like the Rule of 72, compound interest of money, what happens to savings. I mean, America's savings rates is one of the real problems for our economy. And so are there things that the Business Roundtable can suggest over time that will help all Americans avoid unnecessary problems as opposed to people that just have a horrible misfortune?

Mr. BARTLETT. We see it as a shared responsibility. We as an industry, we have the responsibility to explain the terms clearly, and we sometimes fall short of that, with all candor, but we work at it every day. We have the responsibility then to reach out to consumers that get in trouble, provide counseling, try to help them refinance if we need to, try to provide some way that they can get out of trouble, provide for counseling so that they can make better management decisions. The consumers, the borrowers, also have a responsibility to avail themselves of that counseling early to make better management decisions. Congress has a responsibility to provide oversight of this law, the courts have a responsibility, the attorneys, the bankruptcy attorneys have a responsibility to explain clearly what——

Mr. FEENEY. I want to ask one more quick one. On balance you've got $1.1 trillion worth of activity that your companies represent on an annual basis. On balance are those companies much better off if we have fewer people get in hot water or more people get in hot water?

Mr. BARTLETT. The companies are better off when the consumers are better off and the consumers are better off when the companies are better off, so it's a shared responsibility.

Ms. SÁNCHEZ. The time of the gentleman has expired.

Mr. Johnson is recognized for 5 minutes.

Mr. JOHNSON. Thank you, Madam Chair.

Mr. Bartlett, it wasn't the consumer debtors lobby that was responsible for causing the passage of this so-called Consumer Protection Act of 2005, was it? It wasn't the debtors lobby or the consumers who were itching for a change, was it?

Mr. BARTLETT. Well, the consumers are our customers.

Mr. JOHNSON. Well, no, no, no, no, no. Answer my question. It wasn't the consumer lobby that was asking for a change in the Bankruptcy Code?

Mr. BARTLETT. Right, I think that is accurate.

Mr. JOHNSON. It was actually the creditors lobby, those who extend credit, isn't that correct?

Mr. BARTLETT. Congressman, I think it was the Members of Congress that voted for the bill.

Mr. JOHNSON. But there was a sustained lobbying effort that brought about a change in the existing bankruptcy law, and that effort was led by the creditors lobby, isn't that correct?

Mr. BARTLETT. On the lobbying side, yes, sir.

Mr. JOHNSON. And the creditors, what they wanted to do was make it more difficult for debtors to be able to file for relief under the Bankruptcy Code, either 7 or 13, isn't that true, they wanted to make it more difficult?

Mr. BARTLETT. No, sir.

Mr. JOHNSON. Well, they actually succeeded though in making it more difficult and onerous for people who were in dire straits to actually file a successful petition for either 13 or 7, isn't that correct?

Mr. BARTLETT. No, sir.

Mr. JOHNSON. Okay. Well, you disagree and I disagree with you on that. But a person such as Ms. Burroughs—Ms. Burroughs, I think you testified that you read some papers, you had to refinance your home a couple of times because of a job loss and your husband was deployed to Iraq, he's still serving over there. You apparently signed some papers to close a loan that provided for accelerated payments, your mortgage payments were going up and it was just difficult for you all to be able to make it under those circumstances, and so you got to the point where you had no alternative but to declare bankruptcy, is that correct?

Ms. BURROUGHS. Right.

Mr. JOHNSON. And you went in and filed a chapter 13.

Now, how, Mr. Bartlett, has this so-called Consumer Protection Act of 2005 helped people such as Ms. Shirley Jones Burroughs?

Mr. BARTLETT. It continued to make it possible for her to file for bankruptcy if she could not pay her debts.

Mr. JOHNSON. It made it more difficult for her to file, didn't it?

Mr. BARTLETT. No, sir, I don't believe so. That is why she filed and she successfully filed for chapter 13, because she can pay some of her debts.

Mr. JOHNSON. It cost her more to file though, didn't it?

Mr. BARTLETT. Congressman, it allowed her to keep her home, which is what chapter 13 is for. Among other things, it allows her to keep her home as a secured debt so as she makes her payments on the home she can keep it. Without the protection of bankruptcy, of chapter 13, she could not do that.

Ms. SÁNCHEZ. Will the gentleman yield for a quick second?

Mr. JOHNSON. Yes.

Ms. SÁNCHEZ. But, Mr. Bartlett, that relief was available prior to the changes in the act in 2005, is that not correct?

Mr. BARTLETT. That's correct. We strengthened the act in some ways.

Ms. SÁNCHEZ. But the ability for a debtor who experiences a job loss or some loss in income to keep their home was available prior to the changes in the act? That is the question I'm asking you. A simple yes or no question.

Mr. BARTLETT. Yes, it was.

Ms. SÁNCHEZ. I thank the gentleman for yielding.

Mr. JOHNSON. But basically what this new act did was remove the ability of persons like Ms. Burroughs to be able to have the court make an adjustment in the terms of the mortgage on her principal resident?

Mr. BARTLETT. Congressman, I don't believe a bankruptcy court under the old law was able to adjust to a secured rate, a secured mortgage. I think that bankruptcy, you can adjust the unsecured but not the secured. That is what makes it secured versus unsecured. That is the basic difference. In a secured mortgage that is why you have the lower rates, is because it's secured by property, unsecured is not.

Mr. JOHNSON. All right. Thank you, sir. Let me ask Mr. Sommer to respond to that also.

Mr. SOMMER. The 2005 amendments did make chapter 13 more difficult in a number of ways. You have the credit counseling, you have the credit education, you have to file 4 years worth of tax returns, there are a number of other requirements that were added which make it more difficult and more expensive to save a home.

Mr. JOHNSON. And suppose one does not have the documents that are required under the act that are prerequisite. What happens in that case?

Mr. SOMMER. There are many cases that have been dismissed for people not having those documents. Sometimes very minor defects. People who submitted most of their pay stubs, but not quite all within the 60 days, the United States Trustee moves to dismiss those cases. And so the dismissal rate is higher. And because the cost of bankruptcy is higher more people are trying to file without a lawyer and running into trouble.

Ms. SÁNCHEZ. The time of the gentleman has expired.

The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Madam Chairwoman, and thank you for having this hearing, which I think is very important. As Members know, I thought that our enactment of this so-called reform bill was a mistake, and I think what we have learned since then has proven those concerns to be correct.

I would like to just thank Mrs. Burroughs for coming here. I know it is hard to talk about your own experience, especially with your husband deployed in Iraq for our country. Your patriotism is something we want to acknowledge and appreciate. And to tell your story really I think explains the problem here.

You and your husband have worked hard to provide for your home with your two children. It's the American dream. I mean you are the American dream, and to have what happened to you occur shows what's wrong here. You have worked hard, you've actually had a very substantial income because of your hard work. And yet with this mortgage payment issue coupled with our Bankruptcy Act and your husband's deployment and your job loss, which believe me can happen in any family no matter how hard people work, you've ended up in this very distressing situation.

As I think about all the things that we were concerned about in the markups, the years of discussion of the Bankruptcy Act, I don't know that the credit counseling provision was a major focus. And yet as it's played out it has had a very pernicious effect and, from the GAO report, almost no positive impact because by the time people get to this situation there's nothing left to manage. I mean they have a very serious situation.

I'm interested, Mr. Sommer, and again thanks to you because of your advocacy, I'm from San Jose so I know about the consumer bankruptcies and their volunteerism, the interplay between home foreclosures and the credit counseling. Can you talk about that? People are scrambling to keep their homes and then all of a sudden there's this new requirement they didn't know about. Can you just explain that in more detail?

Mr. SOMMER. Well, basically first of all, you should understand that credit counseling cannot stop a mortgage foreclosure.

Ms. LOFGREN. We know that.

Mr. SOMMER. A debt management plan deals typically with credit card debts and not with mortgage debts. What happens very often is that people are attempting to negotiate with their mortgage company. And a lot of the mortgage companies say they offer these loan modifications, people are negotiating, but at the same time the foreclosure is going full speed ahead. And it's not until the brink of the sale that they figure out that this loan modification isn't going to happen, I'm going to have to do something else. They come in at the last minute to file a chapter 13 to stop a foreclosure and then they find out they have to get the credit counseling. And sometimes it's just one more barrier. Usually they can get it, usually it's not a problem. There are a few courts that have held you can't get it on the same day you file the petition, which I think is wrong. But it's one more obstacle in their way at a time when they're absolutely frantic. And any educational purpose would be much better served by the education they would get later in the bankruptcy case.

Ms. LOFGREN. Well, here's a question I have. I mean, there are certainly the individual human tragedies that we care about, and Mrs. Burroughs and her family have outlined them. A family that earned $97,000 a year in 2005 and yet because of this mortgage problem and the interest rates and the compounding—it looks to me illegal compounding—they have been put in this situation. But then there's the macro situation. And we are concerned about what is happening to the American economy because of the level of foreclosures and what that might do to the entire liquidity of the American economy.

Can you draw a connection between the foreclosure rate, this credit counseling provision, and the whole macro American economy that is such a concern to us?

Mr. SOMMER. What happened to Ms. Burroughs is very typical of people who have been subjected to these kinds of loans. She probably would have qualified for a market rate loan based on her income, but she was steered to somebody who gave her a subprime loan and then encouraged to refinance a number of times where she got nothing from the loans other than a much higher loan balance.

I think it's symptomatic of the lack of regulation in that industry and probably the tilt policy wise in our banking regulators toward the private industry.

Ms. LOFGREN. If I may, my time has expired. I will just note that the foreclosure rate is causing certain parts of the country to panic because it's going to have an impact, not just on those who are suffering, but on the entire real estate market that is then going to have an impact on the entire economy of the United States. And sometimes when you have the little nail in the horseshoe, you can find something as simple as this that helped cause those problems. And I yield back.

Ms. SÁNCHEZ. Thank you. The time of the gentlewoman is expired.

The gentleman from Massachusetts, Mr. Delahunt, is recognized for 5 minutes.

Mr. DELAHUNT. Mr. Bartlett, you in your testimony indicate that bankruptcy filings are down?

Mr. BARTLETT. Consumer bankruptcy filings are down by about half of what it had been for every year.

Mr. DELAHUNT. Has there been a study in terms of causal relationship between the bankruptcy law and the fact that the bankruptcy filings are down?

Mr. BARTLETT. I don't know of a specific study on point. I don't know of anyone that believes it's for any other reason.

Mr. DELAHUNT. But there hasn't been any scientific study?

Mr. BARTLETT. I would have to search my mind. I don't know of one. I hadn't heard the question asked before. I believe most people believe it was directly from this law.

Mr. DELAHUNT. With all due respect, most people believe—you know, when I was a kid I believed in Santa Claus.

Mr. BARTLETT. Most people believe in Santa Claus, too, Mr. Delahunt.

Mr. DELAHUNT. And Santa Claus can be good. But to suggest that there's a proximate cause between filings and the passage of the bankruptcy law in 2005 and the fact that it's down, I would respectfully suggest that there are multiple, there are most likely multiple reasons other than the bankruptcy law that filings, consumer bankruptcy filings are down by 50 percent.

Mr. BARTLETT. Congressman, that well could be. I do have some statistics as I'm now searching around.

Mr. DELAHUNT. Okay. Search a little and tell us what the search discovers?

Mr. BARTLETT. We hired a statistician and did some statistical tracking of the bankruptcy filings. And what we discovered is that the law was enacted, as I recall, in April of 2005, and I'm going by memory, with an effective date in October of 2005, as I recall.

Mr. DELAHUNT. Correct.

Mr. BARTLETT. And so bankruptcy filings, as I said earlier, had been analyzed.

Mr. DELAHUNT. And there was a real spike going up to October 2005.

Mr. BARTLETT. Right. And then it dropped like a rock to where bankruptcy filings were almost nonexistent. There are a lot of reasons for that.

Mr. DELAHUNT. So after October 2005 we entered into the age of good times again?

Mr. BARTLETT. No, sir. The filings were premature. Many of the filings were premature. It is clear that that spike in filings was caused by the anticipation of the October effective date. And then the filings came back up and leveled out beginning around April of 2006 and have trended up slightly since then, but by and large stayed about the same with some slight trend up.

Mr. DELAHUNT. Thank you for the statistics, but going back to my original question, there's absolutely no evidence to support a causal relationship other than surmise between the dramatic decline over the past, well, past year or so in terms of bankruptcy filings. Having said that, I guess today is about how it's benefited the consumer. I remember sitting here—how much of the—what's the average decline in terms of the interest rate charged by credit card issuers since the bankruptcy bill has been, since the effective date of the bankruptcy bill?

Mr. BARTLETT. I don't know because I don't think it could track exactly that precisely. Interest rates are charged for a lot of reasons of which the costs of bankruptcies that shouldn't have been filed is one of them, but most of it is monetary policy set.

Mr. DELAHUNT. It was represented to us that we would witness a decline in the interest rates by credit card issuers because the losses that they were experiencing as a result of bankruptcies was in the billions of dollars. But I would challenge you to go back to the Roundtable and come back to us with a statistic that shows that there has been any decline whatsoever in terms of credit card issuers in terms of a real benefit to the consumer. If you would do that for me, I would be—if you would just shake your head, even up and down nodding.

Mr. BARTLETT. Congressman, I don't believe with your premise that you can have that exact a connection. I do believe if there are 700,000 fewer bankruptcies that had been occurring and are not occurring, those costs then are not absorbed as a dead weight by the economy and so therefore those costs are not spread back into the economy.

Mr. DELAHUNT. Are you trying to tell me then that over some time we can expect those savings that have been achieved to result in lower interest rates to the consumer?

Mr. BARTLETT. Not in a way in which you can write it down on a statement, as you asked the question, but in a way of 700,000 times the cost of each bankruptcy that is a lesser dead weight cost to the economy.

Mr. DELAHUNT. I'm not talking about the economy in a macro level. I'm talking about real people like Mrs. Burroughs. You know, all the Mrs. Burroughses and the Congressman Delahunts and the Mr. Bartletts, are we going to finally see a reduction in credit card interest rates because of this bill?

Ms. SÁNCHEZ. The time of the gentleman has expired, but I will allow the witness to answer briefly.

Mr. BARTLETT. Congressman, I don't believe we are going to agree on the context of your question. I'm trying here, but I believe it's a cost to the economy which is spread out to all consumers. I don't think that——

Mr. DELAHUNT. I think you really have answered my question. Thank you.

Ms. SÁNCHEZ. The time of the gentleman has expired. Thank you, Mr. Delahunt.

Mr. Watt is recognized for 5 minutes.

Mr. WATT. Thank you, Madam Chair, and thank you for conducting the hearing. Actually this gives me an opportunity to bring together service on two different Committees, the Financial Services Committee and this Subcommittee, in a way that I don't often have an opportunity to do.

Let me first deal with this counseling thing. Obviously people are getting more counseling, credit counseling at some point. And one of the things that Ms. Jones said is that it's likely to be too late in the process. I think everybody agrees with that.

Mr. Bartlett, you're familiar with the Homeownership Equity Protection Act. We've been dealing with possible amendments to it in Financial Services to deal with predatory lending. And one of the things in that act, one of the questions we've been trying to resolve, is whether some kind of mandatory credit counseling before a borrower could obtain a subprime loan would be appropriate. The current HOEPA Law has no provision in it. North Carolina's HOEPA law does have a provision in it that requires mandatory loan counseling before one can get a subprime loan.

What is the Roundtable's position on whether we should carry that North Carolina standard into the Federal HOEPA Law?

Mr. BARTLETT. Congressman, first, let me say we appreciate your leadership on the Financial Services Committee in the area of subprime. We have a lot of work to do in that area, as you know, and we're all sharing the responsibility to do it.

On mandatory credit counseling, we have not endorsed that yet. We've thought about it, we've talked about it and we may end up.

Mr. WATT. Wouldn't that be one element, one means by which you can advance the counseling—I mean it would be a little bit different, obviously, but if the problem, if the real problem is that people are waiting too late to get credit counseling, this would provide some means of advancing it to an earlier stage. And one of those opportunities would be in a context where people are getting into these high risk loans which are not. We're not indicting subprime loans in general but they generally tend to be more risky than prime loans. That is why they're called subprime loans. So that would be one opportunity. Do you think that is a good idea personally, not speaking for the Roundtable?

Mr. BARTLETT. Let me suggest what I think is a good idea which comes pretty close to what you're asking. One is we've set up a whole series of voluntary counseling services in a project, as you know.

Mr. WATT. But that is not working. I mean it's working at some level. I don't mean to suggest it's not working at all, but it's not achieving the uniform result that I think everybody at this table indicates. Better education and counseling would help in this area in some respects, isn't that right?

Mr. BARTLETT. We are for earlier counseling, better counseling and——

Mr. WATT. All right. We'll take that up in another context.

Let me go to the second question which has been raised by Mr. Sommer here, because the current Bankruptcy Code really doesn't allow for any revisions to be made to a mortgage loan as it does with consumer loans. What do you say about Mr. Sommer now, I know that you're going to point out the problems that some of them are securitized, they are sold to other financing people. But wouldn't that be a good idea to give the bankruptcy court some flexibility in the area dealing with at least exploding adjustable rate mortgages and subprime loans, extending it to that extent?

Mr. BARTLETT. Mortgage lenders will refinance, will reservice, will modify loan agreements and were very willing to do so, and we work it out with the borrower and with the counselor and I suppose sometimes with the attorney. But to give a bankruptcy judge the right to make an unsecured loan, to make a secured loan as if it were unsecured, we think would disrupt mortgage availability for everyone. So we think that is the wrong answer. But modifying the loan so that people can afford them and work it through we think is the right answer, and that is what's happening now.

Mr. WATT. You mean you don't want the assistance of a bankruptcy court in working through this process? You think it's actually better only if it can be done on a volunteer basis?

Mr. BARTLETT. We think you ought to be careful what you pray for. You may get it. And if you give bankruptcy judges the right to turn a secured loan into an unsecured loan after the fact, you will drive up the home mortgage market.

Mr. WATT. Can I just hear Mr. Sommer's response, Madam Chair, and I ask unanimous consent for whatever time it takes for him to respond?

Ms. SÁNCHEZ. Without objection.

Mr. Sommer.

Mr. SOMMER. Well, our proposal is basically to have the bankruptcy court do what the mortgage companies say they are very willing to do, but in practice people have found them a lot less willing to do, which is the kind of loan modification that does reset the payments, not turn the loan into an unsecured loan, but reduce it to the value of the actual property, reduce the interest rate to a fixed rate, which can be done with virtually every other kind of secured loan in bankruptcy other than a mortgage on a principal residence.

So we are really asking for amendments that simply put into practice what the mortgage companies say they want to do. And incidentally, a number of bankers have told me that they would like this because about half of the securitized trusts prohibit loan modification. So when they want to do the modifications, which is better both for them and the borrower, they are prohibited from doing it by the securitized trust, and this would solve that problem.

Mr. WATT. Madam Chair, could I ask for unanimous consent from one additional minute?

Ms. SÁNCHEZ. Without objection, the gentleman is recognized for 1 minute.

Mr. WATT. Just to ask Mr. Bartlett, wouldn't the effect of that be to make lenders a lot more careful about overextending credit in home mortgage situations? I mean basically what he's proposing would allow a court just to bring it down to the value of the actual property. It will still be, it would still be a secured loan. What would be the problem with that?

Mr. BARTLETT. Well, the devil is always in the details. But if you allow a court to change the terms of the security of a mortgage then it's no longer a mortgage basically. Having said that, we want to, we do, we have all kinds of systems as lenders and as an industry to figure out a way to renegotiate the loan or the loan—terms of the loan or loan payment, loan modification. And it happens not just sometimes, it happens a lot to modify that loan to meet both needs. And that is what we do and that is what we set out to do. To put it in the hands of a court I think would make mortgage credit much more expensive and much less available to lower and moderate income people.

Mr. WATT. I thank the Chair for the time. I did want to note that there is a very strong interplay between this and what we're trying to do in the predatory lending area on the other side. So this is very helpful in trying to tie the two issues together. And I thank the gentlelady for yielding the additional time.

Ms. SÁNCHEZ. We appreciate your work on both Committees. And when there's an issue that crosses over like that we appreciate your expertise on this Subcommittee.

Now I would like to recognize a very patient and very gracious Ranking Member for 5 minutes.

Mr. CANNON. I'm not sure patience has a lot to do with it. I have to be here, I think, whereas other Members don't.

I want to thank the gentleman, Mr. Watt, because we've been conflating a lot of ideas here, and your questions just cut through to the chase. And it really comes down to what happens to the cost of mortgages in the end, so I appreciate it.

Ms. Jones, you haven't been asked a lot of questions because I think your testimony was very clear and we appreciate that and it's very helpful. And Mr. Bartlett, of course you've been asked a lot of questions and I appreciate your clarity, and especially on this last answer, because there's been a lot of concern here. Ms. Lofgren has left, but I want to associate myself with her remarks in relation to you, Ms. Burroughs. This is a very tough thing to come in. We've got all these things talking about fancy schmancy stuff. You've got to be on the Financial Services Committee to really get it in some ways. So we thank Mr. Watt for being here. But you're the person who got the creepy loan. If I'm reading this right—look, and I have some sympathy. I've done several mortgages in my life. Always the closing costs, with two exceptions, were much higher than anybody expected, and so you're digging deep to try to cover the costs. And then who knows what all that detail says. And we've created so many laws at the Federal level requiring disclosure that there are literally, I suspect, the last time I did a mortgage, there were probably two dozen pages I had to sign. I guess you could have read them. I didn't have time to read them. And frankly I don't have the expertise to do that. So that leaves us all in a bit of a bollix. But as I understand it, your biggest problem in life is not so much the bankruptcy process. In fact you seem relieved about being able to get through the bankruptcy process. Your problem was the creeps who probably misrepresented the loans that you entered into?

Ms. BURROUGHS. Right.

Mr. CANNON. The record should reflect that she's nodding, saying yes.

Ms. BURROUGHS. Yes.

Mr. CANNON. Thank you. So we have a problem. And many people have talked about the issue of the subprime loans. And our question is how we actually deal with that in the long term.

Now, Mr. Sommer, you talked about a cost of $500 per family and spoke in your oral testimony about how that wasn't being offset by about, I think you said, $100 per payment on average by that half percent of the people that end up paying into the system that were unexpected. Is that unfair for me to conflate those two statements that you made?

Mr. SOMMER. I'm not sure exactly what you're saying. But what I was saying is there's a tremendous cost to every bankruptcy debtor from all the additional burdens, and the vast majority of them are nowhere near——

Mr. CANNON. We're talking about there's an anticipated savings per consumer of $500. And you conflated that with the payment made by an individual debtor in this very small half of 1 percent that is now paying, the group that is additionally paying into the system.

Mr. SOMMER. I was referring to what some of the other Members referred to; the promises that were made by the credit industry about the savings to the economy of $400 to $500. And the fact is that there's a much larger burden, which is probably closer to $500 or $1,000 on each consumer bankruptcy debtor and added cost.

Mr. CANNON. You talked in particular about the payment that is being made by this one-half of 1 percent that is now being put into a chapter 13 payment. That on average I think you said was $100, is that correct?

Mr. SOMMER. Oh, I know. The $100 is the floor on the means test formula threshold. In certain circumstances if you're deemed by the means test to be able to pay $100 a month, then you are presumed to be abusive and a motion can be filed to dismiss your chapter 7.

Mr. CANNON. Were you putting those two things together; the $500 proposed savings? It seemed in your testimony you're not.

Mr. SOMMER. No, not really.

Mr. CANNON. Because they're not really joined?

Mr. SOMMER. No, they have nothing to do with each other.

Mr. CANNON. I'm concerned. We have the highest rate of home ownership in America today than we have ever had. We have some very serious problems now with the marginal lending and the advantage I think that some lenders are taking, and the perhaps fraud, in these marginal lendings. But isn't it true that if you begin to fiddle with the system that the cost for people who would otherwise be able to get into a home would rise, Mr. Sommer?

Mr. SOMMER. I don't think so. First of all, like Ms. Burroughs, a lot of people are sold mortgages that are at a much higher rate than they qualify for.

Mr. CANNON. That is true. But that goes to the fraud of the lender. And also in Ms. Burroughs' case what she's saying is that lenders lied to her and she was expected to be a lawyer for herself and to go through and figure that out. That is a different issue than the financial system that allows her to get a mortgage, which one would hope would be a more honest mortgage.

Mr. SOMMER. I guess I assume by fiddling with the system you included passing consumer protection laws that might regulate some of those practices. That is fiddling with the system in a sense.

Mr. CANNON. But we're talking here about bankruptcy.

Mr. SOMMER. As far as the bankruptcy system, I think that allowing people to modify their mortgages in this way would, number one, get the same benefits that loan modifications get, which the mortgage companies want and, second of all, would make lenders more careful, and we probably wouldn't have so many of these loans. So I'm not sure there would be a bad effect on the economy. I think it would be a good effect.

Mr. CANNON. Well, if you didn't have so many loans—if the Chairman would indulge me—if you didn't have so many loans, obviously it would be nice to get rid of fraudulent loans, but I suspect that actual credit counseling and education of people who are going to get loans might actually help that, and there may be something we could do there.

I appreciate the Chair's indulgence. Let me just say that this is a very, very important issue. This is not a Republican or a Democratic, a conservative or a liberal issue. This is an issue about how we set the rules so that we get the best system so that we have the fewest kind of sick loans by people who cheat but, on the other hand, have a market that allows money to come in and move around adequately and be protected so that the people who want a mortgage can get it.

Thank you, Madam Chair. I yield back.

Ms. SÁNCHEZ. Thank you. I would like to thank all of the witnesses for their testimony today. Without objection, Members will have 5 legislative days to submit any additional written questions which we'll forward to the witnesses and ask that you answer as promptly as you can, and those answers and questions will be made part of the record. Without objection, the record will remain open for 5 legislative days for the submission of any additional materials.

Again, I thank everyone for their time and their patience. This hearing of the Subcommittee on Commercial and Administrative Law is adjourned.

[Whereupon, at 12 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

REPORT ON PERSONAL BANKRUPTCY STATISTICAL STUDY BY SMR RESEARCH CORP., SUBMITTED BY THE FINANCIAL SERVICES ROUNDTABLE, TO THE HONORABLE HOWARD BERMAN, CHAIRMAN, SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

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January 30, 2007

Results Of Personal Bankruptcy Statistical Study

This report contains the results of our new study of personal bankruptcy filings statistics, per our agreement.

Please find attached five Excel spreadsheets with more specific statistical details.

Background

The American Bankers Association (ABA) contacted SMR to inquire about personal bankruptcy research in the wake of the new federal bankruptcy law.

In 2005, President Bush signed a new federal bankruptcy law (BAPCPA), many of whose provisions took effect in October of 2005. Just prior to that date, a large number of filings took place while the provisions of the prior law were still in effect. Then, subsequent to October, 2005, the number of filings declined very significantly.

Proponents of the new law have argued that it would reduce fraudulent or unnecessary bankruptcy filings that had helped cause total filings to rise with great speed in the past. Critics of the new law have argued that it is overly harsh and would make bankruptcy too expensive for low-income filers and for other filers with specific types of hardships, such as divorced people dependent on child support or other unstable forms of income.

Relatively little time has passed since the new law has been in place. However, ABA asked whether statistical research could as yet demonstrate the impact of BAPCPA.

SMR Research Corp., founded in 1984, is an independent publisher of market research on consumer financial services subjects. SMR has published three major studies about the causes of personal bankruptcy filings. SMR possesses a unique database of non-business bankruptcy filings by county, metro area, state, and nationally, updated quarterly and with a history back to

1989. The database includes, for each local area and for each quarterly time period, a computation of filing rates per 1,000 adults, allowing all geographies to be comparable.

National Personal Bankruptcy Filings

The attached spreadsheet BKRUSA.XLS shows a history of personal bankruptcy filings and filing rates per 1,000 adults back to 1989.

Each point is an annual period, with the last three points being the filings and filing rates during 12 months ended during the quarterly periods of March, June, and September, 2006 (the most recent data available).

Charts in this spreadsheet illustrate how bankruptcies were growing prior to BAPCPA, and how they have declined on an annualized basis since the advent of BAPCPA.

Data for this spreadsheet exclude filings in U.S. territories such as Puerto Rico, where Census population data are not regularly updated and therefore cannot be used to compute a filings rate per 1,000 adults.

Quarterly Filings

See next the spreadsheet USAQTR.XLS. This one shows national personal filings by quarter rather than over trailing 12-month periods.

Chart 1 in this spreadsheet more graphically illustrates the degree of decline in filings since the advent of BAPCPA. During 2005, as it became clear that BAPCPA would be enacted and that the implementation date was approaching, bankruptcy filings jumped upward to record levels.

Beginning with the first quarter of 2006, filings were reduced enormously. The salient questions among analysts have been:

1) Were 2006 filings reduced because the "inventory" of potential filers had been used up in the 2005 rush?

2) Were 2006 filings down because BAPCPA had made bankruptcy too expensive or too difficult to file?

3) Were 2006 filings down because BAPCPA had rooted out significant numbers of fraudulent and unnecessary filings?

The quarterly numbers show that filings ebbed in the first quarter of 2006, and since have been rising again. However, the degree of increase has been moderate. It remains unclear where the bankruptcy rate will level off, and when such a leveling off might take place.

Metro Area Study

One way to look at the effect of BAPCPA is to examine if it has changed filings rates differentially in local geographic markets.

The 50 states encompass 379 different metropolitan statistical areas and metropolitan divisions. These metro areas often differ enormously in their financial and demographic characteristics.

For example, according to the 2000 Census, the percentage of households earning $20,000 or less per year peaks in McAllen, TX, at 41.2%. Second-highest in its low-income household concentration is Brownsville-Harlingen, TX, at 39%. Third highest is Morgantown, WV, at 37.1%.

In sharp contrast, only 9.1% of households earned $20,000 or less in the Bethesda, MD, metro area. The figure was only 10.3% in San Jose, CA, and 11.3% in Nassau-Suffolk, NY.

As a result, if BAPCPA caused undue hardship for low-income people seeking bankruptcy relief, we should now see bankruptcy filing rates declining much more significantly in McAllen, Brownsville, and Morgantown than in other, more prosperous cities.

Similarly, divorce status varies by city. The 2000 Census ascertained marital status for all persons aged 15 or older, classifying them as never married, married, separated, widowed, or divorced.

The divorced percentage peaked in Reno-Sparks, NV, at 14.9% of all persons 15 years old or older. By contrast, the divorce rate was lowest in Provo-Orem, UT, at 4.97%. Looking at more populous venues, the percent divorced was only 6.2% in Nassau-Suffolk (Long Island), NY – also one of the peak cities in terms of the absence of low-income households.

Again, if it were true that BAPCPA caused undue hardship for divorced people, then we should begin now to see filing rates falling in the high-divorce cities at a faster pace than in the low-divorce cities.

Decile Group Results

Low-income concentrations and divorce rates are only two of many demographic variables that differ significantly from city to city.

As a result, our first effort to examine the impact of BAPCPA was to find out if the rank-order positioning of the cities, measured by their bankruptcy filing rates, had changed in the post-BAPCPA period.

SMR looked at all 379 metro areas of the nation and rank-ordered them by the bankruptcy filing rates per 1,000 adults for the 12 months ended September 30, 2004 – a time period well before BAPCPA was passed or publicized.

We put these cities into "decile" groups – 10 groups of equal size. In other words, Group #1 was comprised of the 38 metro areas that had the lowest filing rates in September, 2004. Group #2 was comprised of the next 38 metro areas with the second-highest filing rates at that time, and so on. Group #10 was comprised of the remaining 37 cities with the highest bankruptcy filing rates as of September, 2004.

We then looked at the decile group rankings for the same cities for the 12 months ended September 30, 2006. This time period was comprised of 11 months during which BAPCPA was the law of the land, and one prior month when most BAPCPA provisions had not yet been implemented.

Results of the decile group study are as shown in the spreadsheet DECILES.XLS. **The data make clear that very little has changed in terms of the rank-order positioning of U.S. cities by bankruptcy rate. Bankruptcies have declined rather uniformly.**

Note first from the spreadsheet data that there was a wide range in 2004 bankruptcy rates from Group 1 to Group 10. In the 10% of metro areas with the lowest filing rates, the average rate was 3.51 filings per 1,000 adults. In the last group, the average filing rate was 15.02 filings per 1,000.

If you look at the column showing the 2006 average filing rates for the same groups, all numbers are lower. However, the rate still increases in 2006 as you go down the list, showing that all decile groups remain in the same order.

Chart 1 in this spreadsheet plots the decile groups in 2004 on the X-axis and the decile groups for the same counties in 2006 on the Y-axis.

We have drawn a linear trend line through the points. The r-squared correlation statistic for this line, measuring the closeness of fit between the points, is 0.9924. In statistics, an r-squared value of 1.000 represents perfect correlation, a rarely seen phenomenon. A statistic of 0.9924 indicates extremely close correlation.

The decile group study does not mean that BAPCPA has had no effect on bankruptcy filings. Bankruptcies have in fact fallen significantly nationwide.

The decile group study does mean, however, that BAPCPA (at least so far) has had no demonstrable, differential effect from one metro area to

another – even though metro areas do differ greatly in their demographic composition.

In short, whatever caused some cities to have higher bankruptcy rates than others prior to BAPCPA still causes the same cities to have higher filing rates today.

A Closer Look At Low-Income Concentrations

SMR also took a closer look at the relationship between low-income concentrations and bankruptcy filing rates before and after BAPCPA implementation.

See the spreadsheet INCOME.XLS.

We again divided the 379 cities into 10 equal-sized groups, but this time rank-ordered by their percent of households earning less than $20,000 per year. Group #1 was comprised of cities that had the lowest concentration of these low-income households, ranging up to Group #10, with the highest concentration of low-income households.

Chart #1 plots the bankruptcy rates of these groups for 12 months ended 9/04 and for 12 months ended 9/06. As the chart shows, all 10 groups have seen fewer filings in the 2006 period, with a fairly consistent gap between the two lines.

Chart #2 looks at the percentage difference of each group's bankruptcy filing rate in 2004 over 2006. A simple average for the 10 groups was a filing rate exactly 50% higher in the 2004 period than in the 2006 period.

In the wealthiest cities (with lowest concentrations of low-income households), the percent change was 52.2%, meaning that filings dropped more significantly than the national average. This is the opposite of what one would expect to see if BAPCPA were a special hardship for low-income people, which should have caused filing rates to change the least in wealthy cities.

After Group #1, the filing rate change dropped to 42.3%. It rose again thereafter, but not in perfect order. In Group #10, comprised of the cities with the greatest concentration of low-income households, the filing rate changed by 51.5%, just slightly higher than the national average change.

Chart #2 plots the percent difference in filing rates from 2004 to 2006. A linear trend line through the points yields an r-squared correlation statistic of 0.2886, showing poor correlation between low-income household concentrations and the percent change in bankruptcy filing rates.

Bankruptcy And Divorce Rates

Divorce statistics from the Census also gave us the opportunity to review the relationship between divorce and bankruptcy filings.

We again created 10 equal-sized groups of cities, but this time rank-ordered by their percentage of adults divorced in the year 2000 Census. For each group, we computed the average bankruptcy filing rate per 1,000 adults in the same 12-month periods ended in September of 2004 and 2006.

See the spreadsheet DIVORCE.XLS for results. Group #1 was comprised of cities with the lowest divorce rates in the nation, ranging up to Group #10, with the highest divorce rates in the nation.

Chart #1 plots the bankruptcy rates for each group in each of the two time periods.

One of the first things you notice about this chart is that if you compare it against the low-income chart, you find that bankruptcy filings correlate better with divorce rates than with low-income household concentrations – a rather interesting fact. SMR first observed the strong correlation between divorce rates and bankruptcy rates in studies we did in 1996 and 1997, although many things other than divorce alone also can cause a bankruptcy filing.

However, although divorce and bankruptcy do correlate, we see no change at all caused by the enactment of BAPCPA.

Turn to Chart #2, which plots the percent difference in bankruptcy filing rates by divorce rate in 2004 versus 2006. Cities with the highest divorce rates experienced roughly the same change in bankruptcy filings as cities with the lowest divorce rates. A linear trend line through the points yields an r-squared correlation statistic of 0.0083, indicating virtually no correlation at all between divorce rate and change in bankruptcy rate from the pre-BAPCPA to the post-BAPCPA environments.

Where Is The National Trend Headed?

In this assignment, we also were asked to see if we could reliably project where national bankruptcy rates are headed in the post-BAPCPA period.

It appears impossible to do so at the moment. Return to the spreadsheet USAQTR.XLS.

Chart #2 shows total personal filings in the three quarterly periods that have occurred so far in the post-BAPCPA world. A linear trend line through the three points is relatively useless, pointing straight up as though filings will increase sharply and permanently going forward.

Chart #3 plots the same three points and attempts to plot a line that follows the points more tightly. This line is drawn with a polynomial equation to the second power, which is a method used statistically to make trend lines adhere more tightly to the points they describe.

However, this method also fails to produce a reliable result. The slight increase in filings in the third quarter of 2006, versus the strong increase in the second quarter of 2006, causes the polynomial trend line to curve at the top. If extended further into the future, this trend line would turn down and would cause you to believe there will soon be no bankruptcy filings at all.

The problem here is that three data points are not enough to produce reliable trend-line future estimates.

Absent a reliable statistical method to forecast the future, we are left with guesswork. All we know for certain at this time is that as long as filings continue to increase quarterly, we can conclude that the national bankruptcy filing rate will continue moving back toward its prior levels.

We don't know if the rate will ever fully return to those prior levels. It shouldn't, if BAPCPA is successful in preventing bankruptcy fraud and misuse, which nearly all observers would agree had previously occurred in at least some filings.

Conclusions

Again, we would caution that this study was done soon after BAPCPA implementation.

Bankruptcy filings by county and metro area are released only one way by the U.S. Courts, which is on a trailing 12-month basis. At the moment, even the most recent 12-month period includes a piece of the pre-BAPCPA period, meaning we are unable to make a pure-play comparison of filing rates before and after the law was implemented.

However, at least so far, we see no indications at all that BAPCPA has caused any changes in filing rate patterns market-by-market. Instead, all geographies have experienced declines in filings in roughly the same proportion.

Metro areas that had the highest filing rates two years before BAPCPA implementation still had the highest rates afterwards. Metro areas with the lowest filing rates before BAPCPA still had the lowest rates afterwards, generally speaking. The correlation between metro area decile groups in their 2004 and 2006 filing rates was so high as to be beyond debate.

More specifically, there is no evidence as yet of any change in filing rates caused by the prevalence of low-income households, or caused by the prevalence of divorced persons.

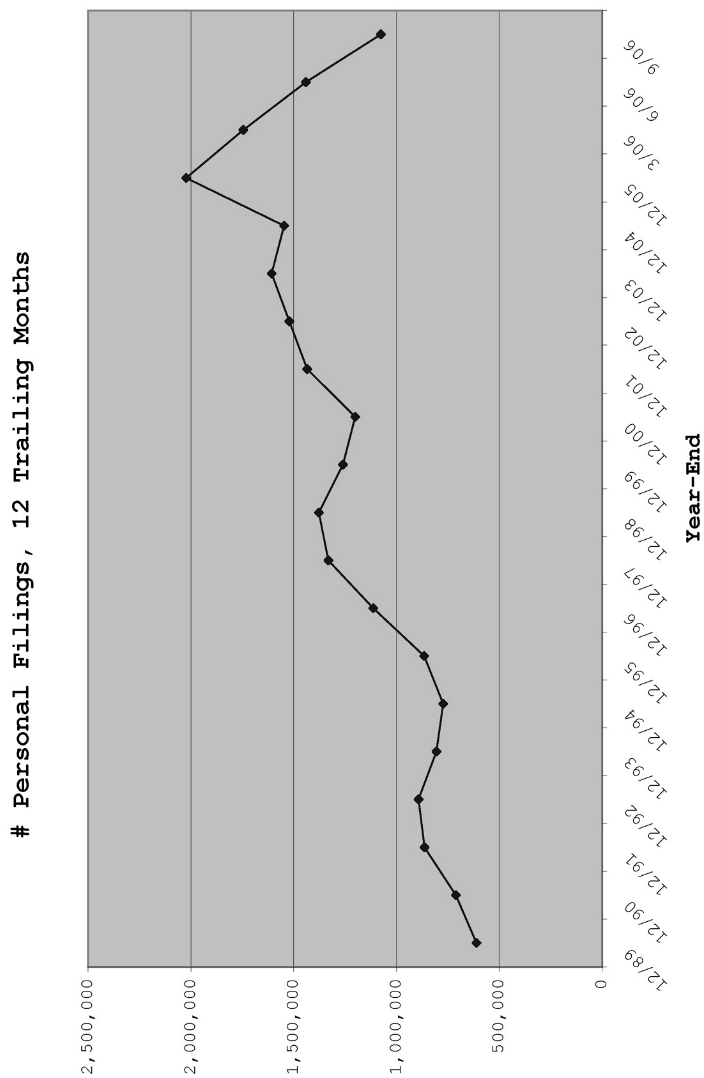
All of these conclusions could change over time. We recommend another study of this sort be done again in six months or a year.

Stu Feldstein
SMR Research Corp.

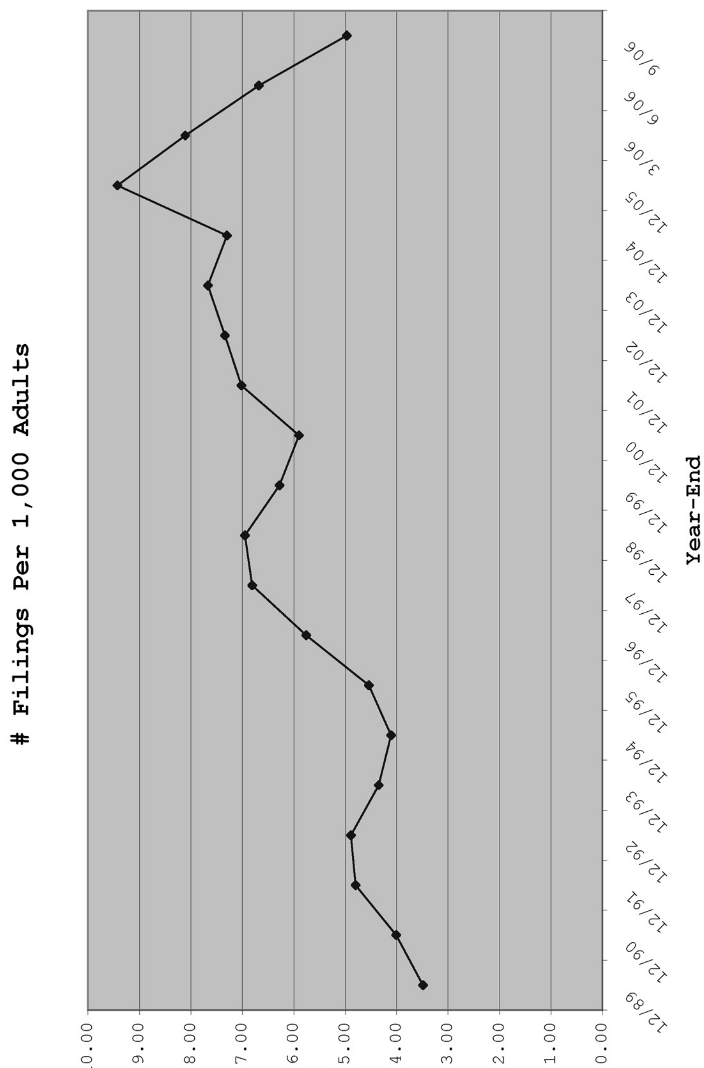
Personal Bankruptcy Filings & Filing Rates, 1989-2006
National Data

Data: U.S. Courts, Census Bureau, SMR Research Corp.
Excludes filings in U.S. territories.

Quarter End	# Personal Filings, 12 Trailing Months	# Filings Per 1,000 Adults
12/89	611,098	3.49
12/90	711,294	4.01
12/91	864,190	4.80
12/92	893,370	4.89
12/93	805,786	4.35
12/94	773,107	4.11
12/95	865,798	4.54
12/96	1,113,107	5.76
12/97	1,332,099	6.81
12/98	1,377,964	6.95
12/99	1,260,855	6.28
12/00	1,201,020	5.90
12/01	1,435,060	7.02
12/02	1,522,127	7.34
12/03	1,608,012	7.67
12/04	1,547,232	7.30
12/05	2,023,767	9.43
3/06	1,745,929	8.11
6/06	1,441,679	6.68
9/06	1,076,545	4.97



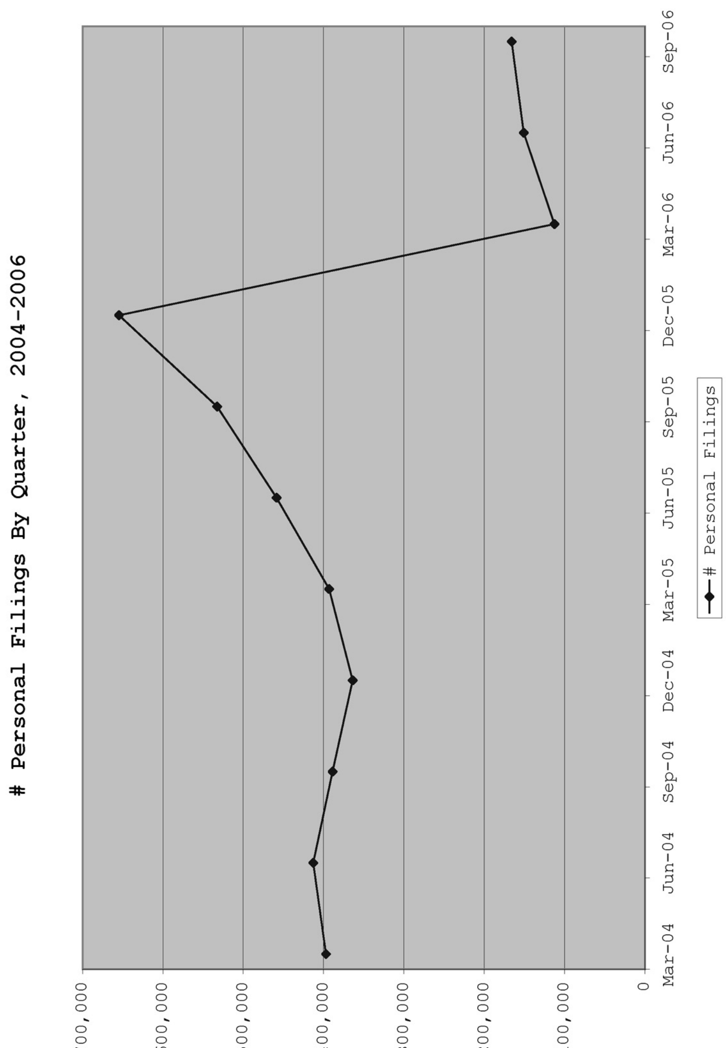
Personal Filings, 12 Trailing Months
2,500,000
2,000,000
1,500,000
1,000,000
500,000
0
12/89
12/90
12/91
12/92
12/93
12/94
12/95
12/96
12/97
12/98
12/99
12/00
12/01
12/02
12/03
12/04
12/05
3/06
6/06
9/06
Year-End



Filings Per 1,000 Adults
10.00
9.00
8.00
7.00
6.00
5.00
4.00
3.00
2.00
1.00
0.00
12/89
12/90
12/91
12/92
12/93
12/94
12/95
12/96
12/97
12/98
12/99
12/00
12/01
12/02
12/03
12/04
12/05
3/06
6/06
9/06
Year-End

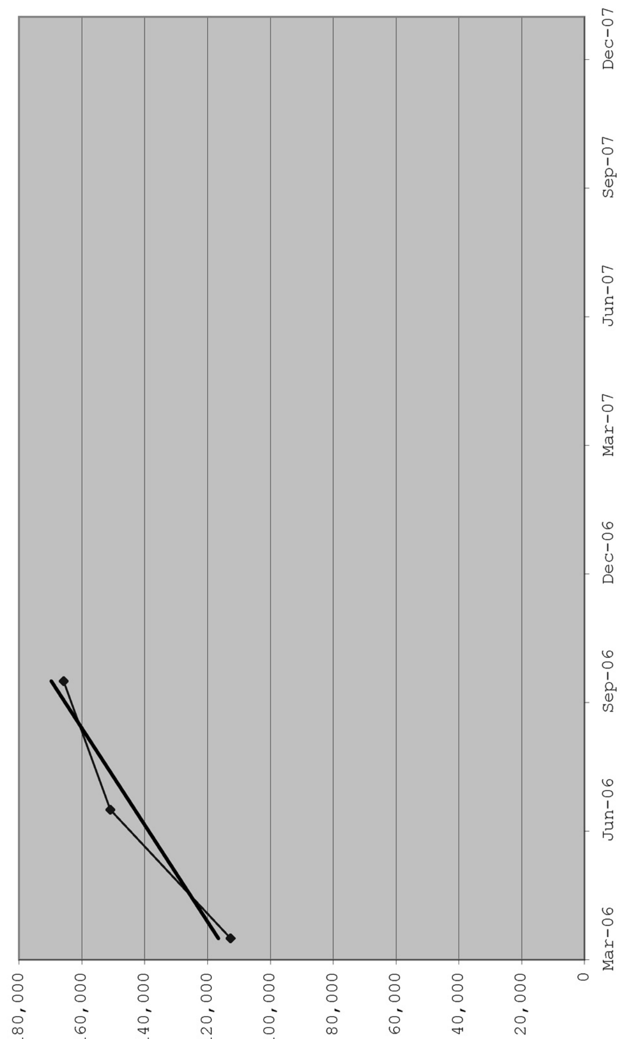
Personal Bankruptcy Filings By Quarter Only
National Data
Data: U.S. Courts, SMR Research Corp.

Quarter	# Personal Filings
3/31/04	397,006
6/30/04	412,861
9/30/04	388,864
12/31/04	363,890
3/31/05	393,086
6/30/05	458,597
9/30/05	532,526
12/31/05	654,633
3/31/06	112,685
6/30/06	150,975
9/30/06	165,862

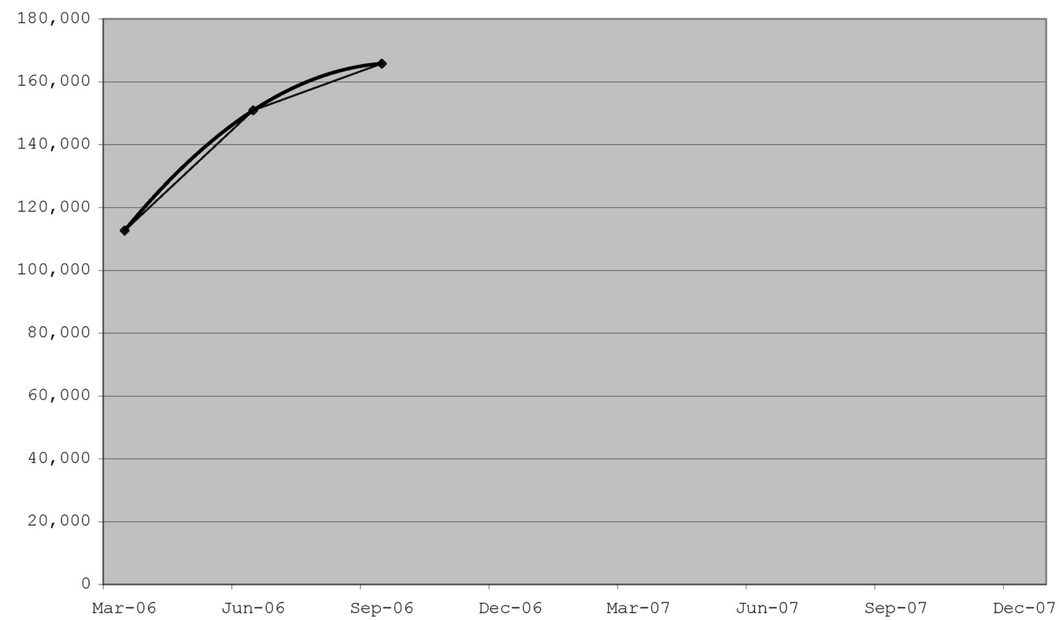


Personal Filings By Quarter, 2004-2006
700,000
600,000
500,000
400,000
300,000
200,000
100,000
0
Mar-04
Jun-04
Sep-04
Dec-04
Mar-05
Jun-05
Sep-05
Dec-05
Mar-06
Jun-06
Sep-06
Personal Filings

Quarters Following BAPCPA Implementation: Linear Trend Line Goes Up



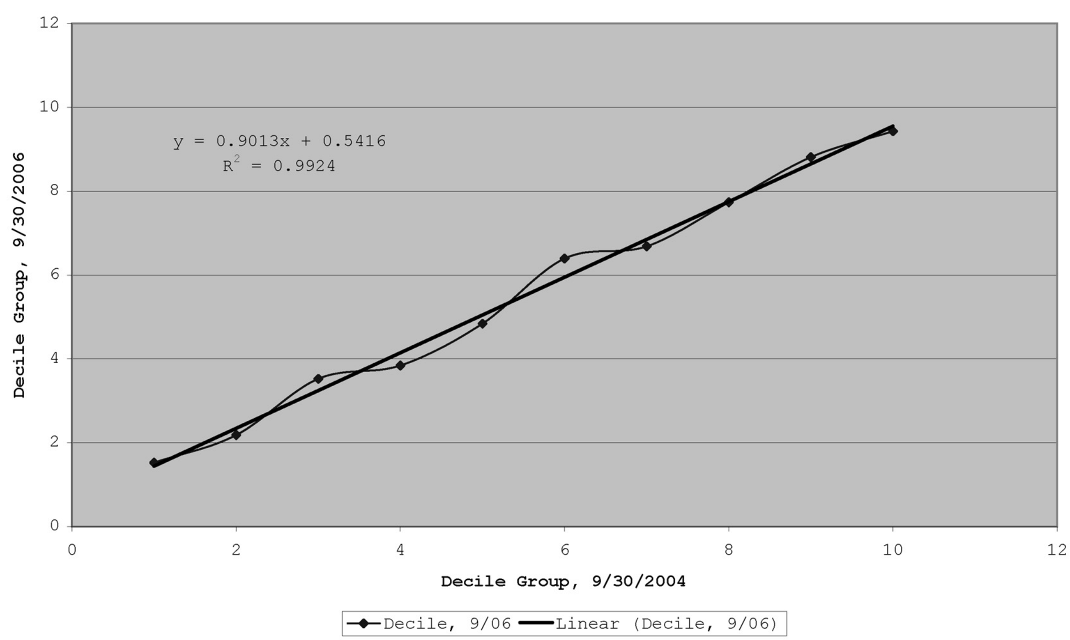
Quarters Following BAPCPA Implementation:
Polynomial Trend Line Would Curve Down

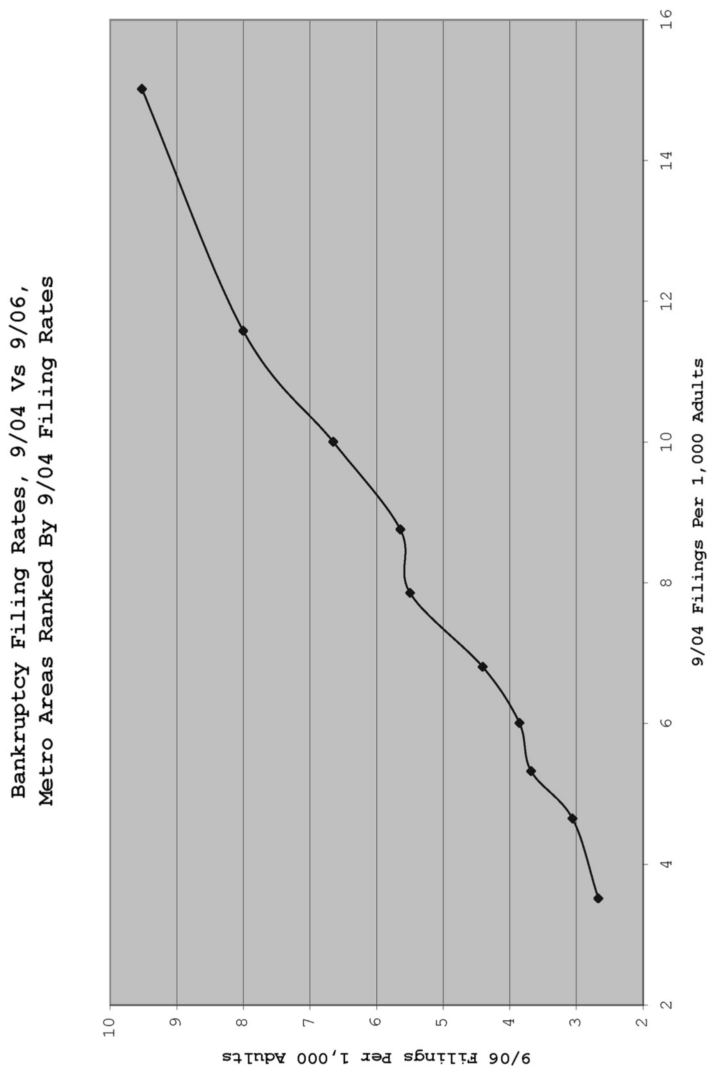


Personal Bankruptcy Filing Rate Decile Results:
379 Metro Areas Organized in 10 Groups by Their Filing Rates as of 9/30/2004
Data: U.S. Courts, Census Bureau, SMR Research Corp.

# of MSAs	Decile, 9/04	Decile, 9/06	Bkr Filing Rate, 9/04	Bkr Filing Rate, 9/06
38	1	1.5263	3.5137	2.6721
38	2	2.1842	4.6492	3.0603
38	3	3.5263	5.3232	3.6808
38	4	3.8421	6.0082	3.8566
38	5	4.8421	6.8061	4.4076
38	6	6.3947	7.8561	5.4982
38	7	6.6842	8.7576	5.6445
38	8	7.7368	10.0021	6.6518
38	9	8.8158	11.5813	8.0026
37	10	9.4324	15.0173	9.5249

379 Metro Areas Ranked by Personal Bankruptcies Per 1,000 Adults, Deciles in 9/04 Versus 9/06

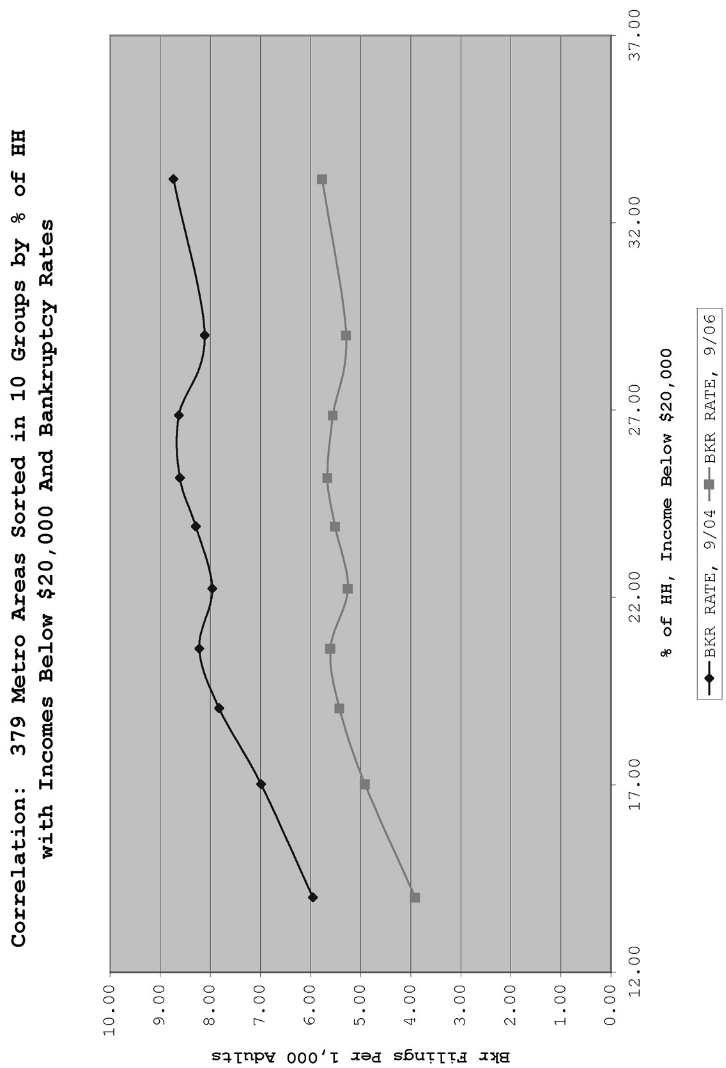


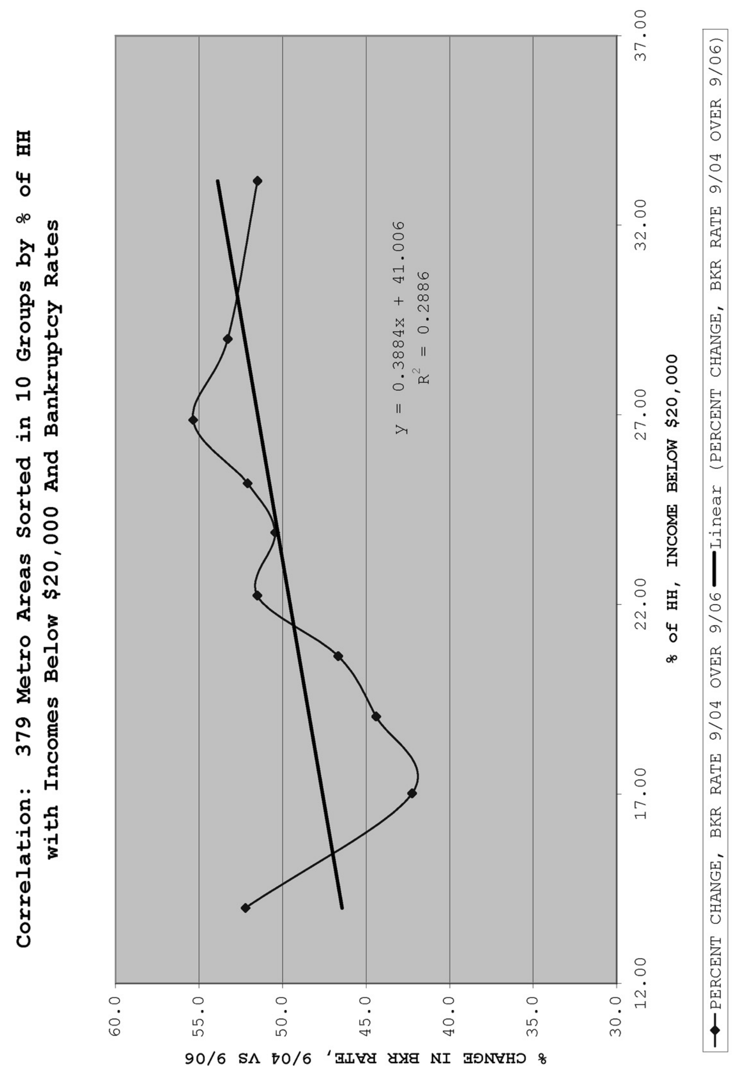

Bankruptcy Filing Rates, 9/04 Vs 9/06,
Metro Areas Ranked By 9/04 Filing Rates
9/06 Filings Per 1,000 Adults
9/04 Filings Per 1,000 Adults
10
9
8
7
6
5
4
3
2
4
6
8
10
12
14
16

Personal Bankruptcies & Concentration Of Low-Income Households:
379 Metro Areas Organized in 10 Groups by Percent Of Households With Incomes Below $20,000, Census 2000

Data: U.S. Courts, Census Bureau, SMR Research Corp.

# METRO AREAS	% HH, INCOME BELOW $20,000	BKR RATE, 9/04	BKR RATE, 9/06	PERCENT CHANGE, BKR RATE 9/04 OVER 9/06	
38	13.99	5.96	3.91	52.2	
38	17.01	6.99	4.92	42.3	
38	19.04	7.83	5.42	44.4	
38	20.63	8.22	5.61	46.7	
38	22.23	7.96	5.26	51.5	
38	23.89	8.29	5.51	50.5	
38	25.19	8.61	5.66	52.1	
38	26.86	8.63	5.56	55.4	
38	29.00	8.11	5.29	53.3	
37	33.16	8.74	5.77	51.5	
				499.8	Sum
				50.0	Simple average

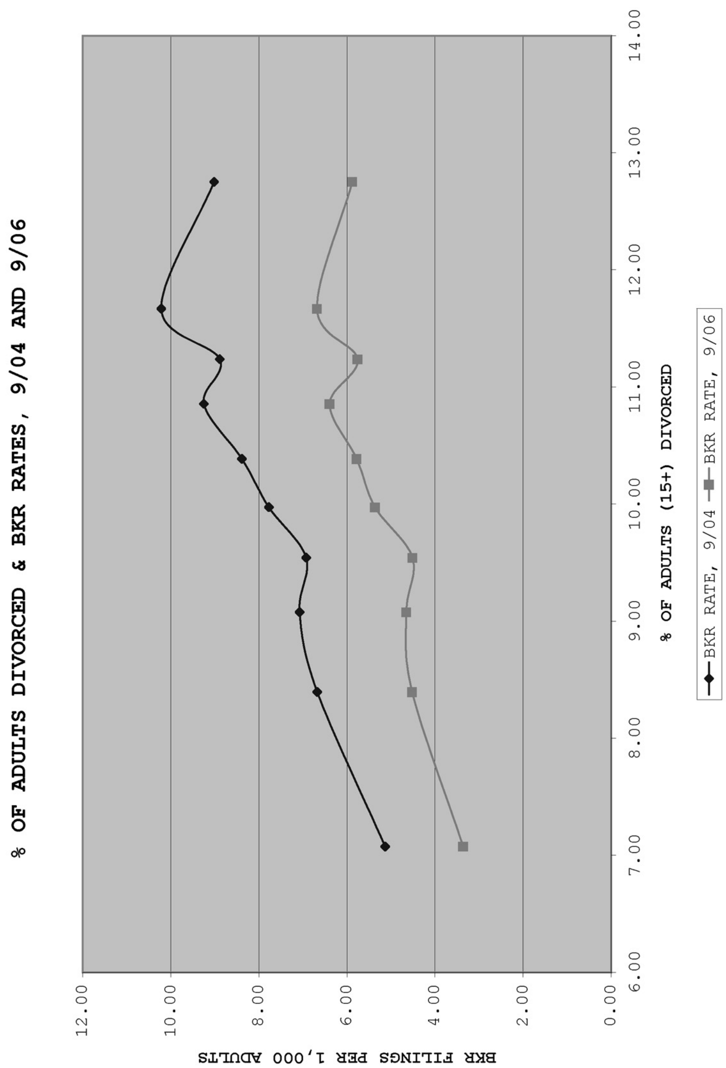

Correlation: 379 Metro Areas Sorted in 10 Groups by % of HH with Incomes Below $20,000 And Bankruptcy Rates
Bkr Filings Per 1,000 Adults
% of HH, Income Below $20,000
BKR RATE, 9/04
BKR RATE, 9/06
10.00
9.00
8.00
7.00
6.00
5.00
4.00
3.00
2.00
1.00
0.00
12.00
17.00
22.00
27.00
32.00
37.00

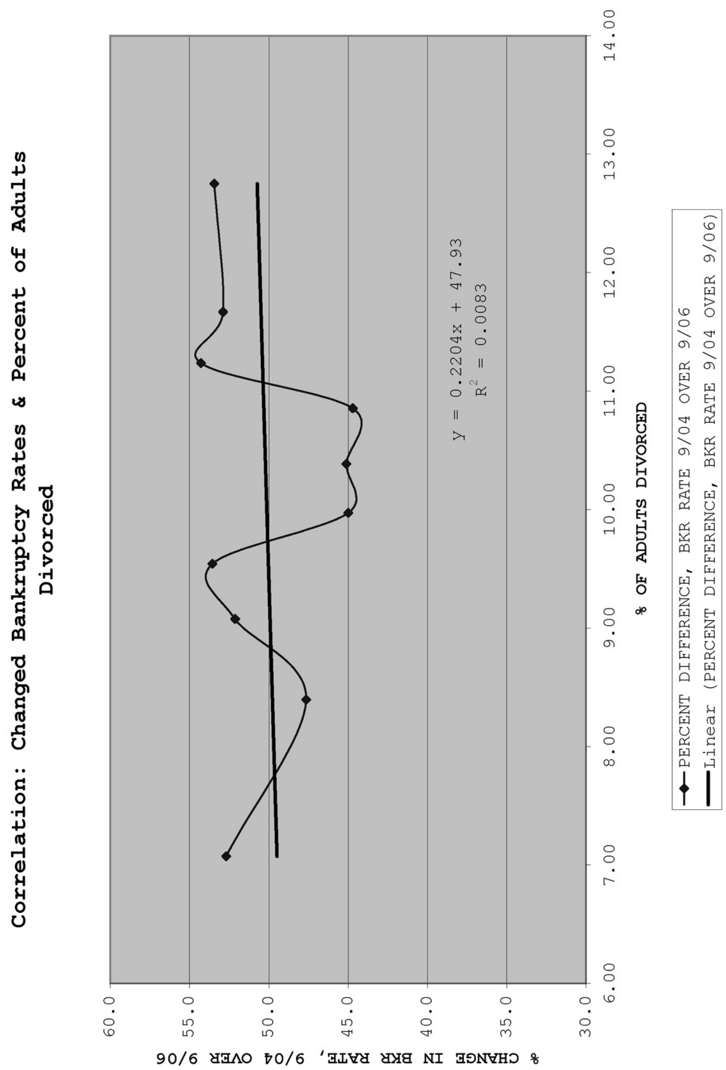

Correlation: 379 Metro Areas Sorted in 10 Groups by % of HH
with Incomes Below $20,000 And Bankruptcy Rates
% CHANGE IN BKR RATE, 9/04 VS 9/06
60.0
55.0
50.0
45.0
40.0
35.0
30.0
12.00
17.00
22.00
27.00
32.00
37.00
y = 0.3884x + 41.006
R2 = 0.2886
% of HH, INCOME BELOW $20,000
PERCENT CHANGE, BKR RATE 9/04 OVER 9/06
Linear (PERCENT CHANGE, BKR RATE 9/04 OVER 9/06)

Personal Bankruptcies & Divorce Rates:
379 Metro Areas Organized in 10 Groups by Percent Of Adults Divorced, Census 2000

Data: U.S. Courts, Census Bureau, SMR Research Corp.

# METRO AREAS	% PERSONS OVER 15 YRS, STATUS IS DIVORCED	BKR RATE, 9/04	BKR RATE, 9/06	PERCENT DIFFERENCE, BKR RATE 9/04 OVER 9/06
38	7.07	5.13	3.36	52.7
38	8.39	6.68	4.52	47.7
38	9.08	7.08	4.65	52.1
38	9.54	6.93	4.51	53.6
38	9.97	7.77	5.36	45.0
38	10.38	8.39	5.78	45.1
38	10.85	9.25	6.39	44.7
38	11.24	8.89	5.76	54.3
38	11.67	10.22	6.68	52.9
37	12.75	9.02	5.88	53.4


% OF ADULTS DIVORCED & BKR RATES, 9/04 AND 9/06
BKR FILINGS PER 1,000 ADULTS
12.00
10.00
8.00
6.00
4.00
2.00
0.00
6.00
7.00
8.00
9.00
10.00
11.00
12.00
13.00
14.00
% OF ADULTS (15+) DIVORCED
BKR RATE, 9/04
BKR RATE, 9/06


Correlation: Changed Bankruptcy Rates & Percent of Adults Divorced
% CHANGE IN BKR RATE, 9/04 OVER 9/06
60.0
55.0
50.0
45.0
40.0
35.0
30.0
6.00
7.00
8.00
9.00
10.00
11.00
12.00
13.00
14.00
% OF ADULTS DIVORCED
y = 0.2204x + 47.93
R² = 0.0083
PERCENT DIFFERENCE, BKR RATE 9/04 OVER 9/06
Linear (PERCENT DIFFERENCE, BKR RATE 9/04 OVER 9/06)

RESPONSE TO POST-HEARING QUESTIONS FROM STEVE BARTLETT, PRESIDENT AND CEO, FINANCIAL SERVICES ROUNDTABLE, WASHINGTON, DC

QUESTIONS FOR STEVE BARTLETT

1. Ms. Burroughs describes a horrific situation in which she is struggling to pay her Chapter 13 plan payments, make her monthly mortgage to CitiFinancial, and feed herself and her children, while her husband is deployed in Iraq. In fact, Ms. Burroughs's attorney has suggested that CitiFinancial's actions are a classic example of predatory mortgage lending and have led Ms. Burroughs to file for bankruptcy.

    What is your assessment of the impact the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (2005 Act) has on homeowners, like Ms. Burroughs, facing foreclosure?

    Bankruptcy protection is still available for debtor, like Ms. Burroughs, who need it. In general, PL 109-8 did not substantially change the rights of homeowners who fall behind on a mortgage. The legislation did create significant penalties for mortgage lenders that do not properly credit payment received in a Chapter 13 plan.

2. How are consumers in dire financial situations protected by the 2005 Act?

    First, consumers have access to higher quality credit counseling. Second, consumers may use 11 USC 502(k) to obtain voluntary debt relief outside of bankruptcy, which the Roundtable strongly supports. Finally, the regulations that govern attorney conduct will help consumers who, in the past, may have been misled about bankruptcy and its consequences. The FTC specifically warned consumers and policy makers about deceptive advertising.

3. When you testified before the Senate Judiciary Committee last December, you stated that "we need to reach consumers much sooner in the financial cycle so that credit counseling can live up to its full potential. If consumers wait until they are completely underwater, counseling may not live up to its full potential."

    How would you propose to reach consumers much sooner in the financial cycle?

    We are working with our member companies to identify consumers who fall behind early and direct them to DOJ-approved credit counseling through our website, mymoneymanagement.net. We also have a similar effort called H.O.P.E – the Homeownership Preservation Effort, where homeowners can talk to independent counselors about their options to save them from foreclosure.

4. How do you respond to the concerns of consumer advocates that the associated fees for filing a bankruptcy petition continue to hurt disproportionately those families forced to file for bankruptcy due to job loss, divorce, or worse, illness?

The fees mandated by law can be waived under the new law, using the in forma pauperis provision. The high fees associated with attorneys' fees are more difficult to regulate.

5. How do you respond to the concerns of consumer advocates that the credit counseling requirement simply creates an unnecessary hurdle for many debtors who must eventually file for bankruptcy protection?

   The Roundtable believes that credit counseling, which may already be deterring 10 percent of filers away from bankruptcy and into more appropriate options, has the potential to do great good in the long run.

6. Over the nearly eight years that 2005 Act was under consideration by Congress, we continuously heard that each American family was paying a $400 to $550 "bankruptcy tax" for profligate bankruptcy filings.

   Since the enactment of the Act two years ago, have interest rates dropped?

   Since enactment, the Federal Reserve has raised interest rates sever times.

   Has the cost of goods and services been lowered in response to the perceived savings resulting from the enactment of the 2005 Act's reforms?

   As I stated during my oral testimony, it is too early to gauge the full cost savings effect of PL 109-8. However, as Clinton Treasury Secretary Larry Summers noted, high bankruptcy losses put upward pressure on interest rates. It is therefore logical to assume that fewer losses will weaken such upward pressure. Additionally, there are many factors contributing to interest rates (for example, the Federal Reserve has raised interest rates 12 times from 2004-2006) and the cost of goods and services. PL 109-8 helps reduce upward pressure on interest rates and the cost of good and services.

7. Mr. Sommer in his testimony states, "Bankruptcy has gone from being a relatively low-priced proceeding that could be handled quickly and efficiently to being an expensive minefield of new requirements, tricks and traps traps that catch the innocent and unsuspecting debtor."

   What is your response?

   Bankruptcy has been reformed to ensure that there is transparency and fuller disclosure for all stakeholders. The Roundtable believes these new requirements will increase public confidence in the bankruptcy system. The counseling requirements serve to help educate consumers. This education will help them avoid bankruptcy now or later.

8. Consumer advocates indicate that many approved counseling and financial management training providers do not offer their services in language other than English or in a timely

manner. What is the Financial Services Roundtable doing to educate consumers with limited English language skills about pre-bankruptcy filing requirements? Is your website – mymoneymanagement.net – available in Spanish or other languages?

The Roundtable and it member companies are committed to providing n a wide range of services and content in Spanish and other languages. Several approved credit counseling agencies provide counseling in numerous languages in addition to English.

9. You note that there is higher percentage of people filing for chapter 13 relief. Isn't possible that the reason for this is not the 2005 Act, but as a result of other factors, such as the imploding subprime mortgage market and attendant increase in foreclosures?

   The explanation for the higher percentage of Chapter 13 filers is unknown at this time. The filing rates are so low compared to historical levels, it would be premature to point to any one definitive explanation for the increased percentage of Chapter 13 cases post-reform. However, it is worth noting that Chapter 13s increased as a percentage immediately after the effective date of PL 109-8, which occurred before the current issues with sub prime mortgage foreclosures arose.

10. Do you support making bankruptcy lest costly for honest, lower income debtors?

    PL 109-8 contains a provision to waive court fees and costs for low income consumers. The Routable supports this provision.

11. Credit Suisse in its March Update states that as a result of the 2005 Act "bankrupt borrowers are riskier" and that the "stringent means test also means more delinquent loans have to go into foreclosure directly rather than to bankruptcy," and the 2005 Act "is directly responsible for the rising foreclosure rate since the end of 2005."

    What is your response to these statements?

    The foreclosure rates are more likely driven by increases monthly payments due to interest rate increases associated with ARM loans. As I stated earlier, Chapter 13 remains a viable option for homeowners. Because the means-test measures ability to pay for unsecured debts, it is highly unlikely to have much effect on payment ability for secured debts, such as mortgages.

12. You noted that some estimate the "total cost savings to the American economy" as a result of the enactment of the 2005 Act to be "around $60 billion."

    What are the factors comprising this estimate of $60 billion?

    Where have Americans experienced these tremendous savings?

    For example, are interest rates lower now than they were before the 2005 Act became law?

Are the prices of goods and services lower now?

This estimate of economic savings was made by Senator Grassley during a previous bankruptcy hearing. I believe the estimate is based on losses foregone because bankruptcy filing rates have declined so significantly. As I stated earlier in my oral testimony, interest rates and prices are driven a combination of factors. A sudden decrease in losses to the business community (as has happened with lower bankruptcy filing rates) is one positive factor that should reduce costs and promote economic growth.

13. The District Court in Minnesota held that he 2005 Act's prohibition against attorneys counseling their clients about incurring debt of any kind, including legitimate debt, in contemplation of bankruptcy to b an unconstitutional infringement of the First Amendment. The court reasoned:

    BAPCPA's § 526(a)(4) limitation on speech extends beyond any need to protect the bankruptcy process. A lawyer who represents consumers contemplating bankruptcy bears the duty of zealous representation. Conversely, Congress does not have the power "top effect a serious and fundamental restriction on advocacy of attorneys." If upheld, this law would prevent lawyers from adequately and competently advising their clients. As such, it unconstitutionally impinges on expressions protected by the First Amendment of the Constitution.

    What is your response?

    A financial institution lends to consumers on condition that the borrower promises to repay the debt according to the terms of the loan. When a consumer makes that promise to repay, knowing that he or she will not repay the debt but will instead file for bankruptcy, I believe the bankruptcy process is being abused. Bankruptcy should be reserved for honest borrowers who fall on hard times. Counseling a client to incur debt by promising to repay the debt while also advising the client to file for bankruptcy is not in the best tradition of legal practice. Section 526(a)(4) was specifically and wisely targeted to end this kind of abuse.

RESPONSE TO POST-HEARING QUESTIONS FROM HENRY J. SOMMER, PRESIDENT, NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS, PHILADELPHIA, PA

1. As you state in your testimony, the Bankruptcy Abuse Prevention and Consumer Protection Act or 2005 (2005 Act) requires consumers to submit in connection with their bankruptcy cases extensive documentation, such as tax returns, payment advices, and bank statements, among other documents.

What happens if a debtor simply does not have these documents?

The answer to this question depends on several factors. If the documents don't exist at all, such as for a debtor who cannot produce payment advices because she was unemployed for the last 60 days, the debtor can ordinarily file something to explain that. However, if the debtor simply does not have payment advices or other required documents she received, the debtor, or often her counsel, must expend time and expense to obtain them. If they cannot be obtained, the consequences depend on the different statutory rules for different types of documents. In some cases, the debtor can expend time and money to ask for waiver of the requirement. But with respect to others, such as tax returns or transcripts, there is no statutory provision giving the court the power to waive the requirement. Typically, the debtor will have to expend time and money to defend a motion to dismiss the case, arguing that the documents could not be provided due to circumstances beyond the control of debtor. If the debtor is not successful in excusing the failure to provide a required document, the entire bankruptcy case can be dismissed, and in practice many cases are dismissed because required documents were not filed, especially cases of debtors who do not have attorneys and may not know how to explain the absence of documents.

2. If you could redraft the provision in the 2005 Act requiring credit counseling, how would you do that?

My first choice would be to eliminate it. It is not serving the purpose for which it was enacted. Almost no debtors are deciding, after the credit counseling briefing, that a debt management plan is a better alternative for them, and it is a significant barrier to bankruptcy relief. Insofar as the counseling might have an educational benefit, that goal is better served by the postpetition financial education course, given when the debtor is not in a panicked crisis mode.

Short of eliminating the requirement, there should be more flexibility. Courts should be able to allow debtors to proceed with their cases if they received credit counseling more than 180 days before the petition, or if they promptly remedy a failure to obtain counseling before the petition. There should also be more exceptions where counseling and a debt management plan cannot solve the debtor's problem, such as when the debtor is facing foreclosure.

3. You mention in your prepared testimony that the U.S. Trustee Program "has done virtually nothing to address" abuses by creditors in the bankruptcy system. Please describe some of these abuses.

Some of these abuses include the very frequent overcharges in proofs of claims filed by mortgage companies, and in mortgage company motions for relief from the automatic stay. Many courts have decried the fact that the attorneys filing these motions have not reviewed the payment records on which they are based, and in fact cannot even obtain copies of those records. Similarly, courts have found widespread fraud with respect to affidavits filed in support of such motions being signed in blank form, often months before they are submitted. Other cases have found widespread fraud with respect to claims for attorney's fees by mortgage company attorneys. And there are also widespread cases of credit card company proofs of claims being submitted without required documentation, sometimes in excessive amounts, or on debts beyond the statute of limitations, or on debts which were discharged in a prior bankruptcy case. None of these abuses were uncovered by the U.S. Trustee program, which puts no resources into investigating such matters.

4. With respect to your proposals intended to help families facing foreclosure, if they became law, could they have the unintended consequences of encouraging people to file for bankruptcy relief just so they can renegotiate their interest rates?

There are many reasons why this would not happen, the primary one being that people do not file bankruptcy lightly. The costs are significant and the stigma of bankruptcy remains strong. Contrary to creditors' claims that bankruptcy is used as a financial planning tool by people not facing great financial difficulty, the results of the means test have confirmed that bankruptcies are not filed by people who can afford to pay their debts. In fact, one study concluded that something like 15% of the population would benefit financially from filing bankruptcy. However, the filing rates are far below that percentage because people simply do not file unless bankruptcy is desperately needed. Although similar modification of automobile loans has been available since 1978, there has never been any evidence that debtors filed for bankruptcy simply to renegotiate their car loans. Nor was there any rush to file bankruptcy to write-down mortgage balances in those courts that allowed such modifications of mortgages in the years before the Supreme Court's *Nobelman* decision.

5. If Chapter 13 debtors are allowed to modify mortgages on their principal residence, would this result in higher interest rates?

No. The mortgage lenders themselves have repeatedly said they do not want to foreclose and would prefer loan modification because they do better financially if they do not have to take ownership of and sell distressed properties in a bad real estate market. Thus, by their own reckoning, the lenders would not suffer greater losses, which would be the only logical reason interest rates might rise. In fact, our proposal would remove an impediment to the loan modifications the lenders say they want, possibly leading to lower losses for them. In many cases, they have said they would like to consider modifications but are prohibited from doing so by the terms of some of the securitization trusts. Again, looking to the experience with cars, there is absolutely no evidence that the ability to modify car loans in chapter 13, paying the lender at least what it would receive if it repossessed, plus interest, has had any effect on auto loan interest rates. And, in the four judicial circuits where strip-down of mortgage loans was available for years before the Supreme Court's *Nobelman* decision, circuits with at least half of the nation's population, there was no discernible effect on mortgage interest rates.

6. One of your legislative proposals seeks to prohibit the enforcement of mandatory arbitration clauses found in consumer contracts.

Why are you seeking this prohibition?

The law concerning the enforceability of arbitration clauses in bankruptcy proceedings is currently unclear. Some courts have declined to enforce such clauses because they recognized that an arbitrator cannot take into account the fact that bankruptcy is a multiparty proceeding, in which the court considers not only the interests of the debtor and the creditor involved, but also the impact on a possible bankruptcy plan, and on the other creditors and stakeholders involved in the bankruptcy case. Other courts, however, have held that a bankruptcy court is powerless to decide cases in which such clauses exist, even with respect to clearly predatory loans (which almost always contain mandatory arbitration clauses.) In addition, it has been widely recognized that consumers have no power to bargain over the inclusion of such clauses in their contracts, even if they understood (which they rarely do) that the clause deprives them of the right to go to court concerning a dispute with the lender. Lastly, requiring every dispute with a lender in a bankruptcy case to be diverted to arbitration severely hampers the ability to manage the case in one centralized forum, the bankruptcy court, as Congress intended in the Bankruptcy Code. The law should be clarified to ensure that can happen.

RESPONSE TO POST-HEARING QUESTIONS FROM YVONNE D. JONES, DIRECTOR, FINANCIAL MARKETS AND COMMUNITY INVESTMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Responses to Questions for Yvonne Jones
From the Hon. Linda Sánchez,
Committee on the Judiciary, House of Representatives

Question: In your statement, you note that GAO found that there were few formal complaints lodged against the credit counseling providers approved by the United States Trustee Program. Please describe the types of problems that these complaints concerned.

Answer:

As noted in our report on bankruptcy credit counseling (GAO-07-203), between October 2005 and October 2006, the Trustee Program received 124 complaints about credit counseling and debtor education providers, out of more than 930,000 sessions.

- Roughly one-third of these complaints involved problems with the counseling or education certificate—for example, that the certificate was not issued in a timely fashion or contained inaccurate information.

- Roughly one-quarter alleged that the provider did not meet state licensing requirements.

- Roughly one in five were related to the content of the counseling or education session—for example, alleging that it provided legal advice or was not sufficiently personalized.

- About one in ten related to fees, most of which alleged that fees were not waived for debtors unable to pay;

- A small number of complaints were related to other issues, such as difficulty in making an appointment.

As our report noted, our review of the documentation associated with a selection of these complaints found that the Trustee Program took action to assess and follow up on each complaint, including notifying the relevant provider and asking for a response to the allegation. In a few cases, the provider acknowledged to the Trustee Program that the complaint had merit and responded accordingly—for example, refunding a fee to a client or implementing additional procedures to ensure staff compliance with relevant policies. In no case did a complaint result in the Trustee Program removing a provider from the approved list.

<u>Question</u>: You note that participants in the bankruptcy process largely believed that the financial management training course to be beneficial. It appears that you are not able to make the same assessment about credit counseling. What particular benefits did debtors cite about the financial training course?

<u>Answer</u>:

We did not speak directly to debtors during the course of our work. However, we did meet with many stakeholders who represented debtors or could speak to their experiences, including consumer groups, representatives of panel trustees and bankruptcy attorneys, and financial literacy experts. Overall, these parties generally agreed that the predischarge debtor education course was likely to help improve consumers' financial literacy. For example,

- An expert in the field of financial literacy noted that it is sensible for consumers emerging from bankruptcy to receive guidance on avoiding future debt and rebuilding credit.

- The National Association of Chapter 13 Trustees noted that several years before the Bankruptcy Act took effect, the association established a similar debtor education course and that Chapter 13 debtors who took the course were more likely to successfully complete their repayment plans.

- A representative of the Administrative Office of the U.S. Courts noted that individuals emerging from bankruptcy are in a "teachable moment" that puts them in a position to effectively reflect on their financial problems and learn strategies for better financial management.

- An industry representative noted that any financial education debtors receive is beneficial given that most consumers have little understanding of basic financial stewardship principles, such as the impact of making only the minimum payment on credit cards.

DOCUMENTS OF PERSONAL BANKRUPTCY FILING OF SHIRLEY JONES BURROUGHS, GASTONIA, NC

FORM B10 (Official Form 10)(04/05)

United States Bankruptcy Court Western District of North Carolina | **PROOF OF CLAIM**

Name of Debtor Hoyt Burroughs
Shirley Burroughs

Case Number 07-30139

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property:
CitiFinancial

Name and address where notices should be sent:
P.O. BOX 70919
CHARLOTTTE, NC 28272-0919

Telephone number: 888-701-6280

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
☐ Check box if you have never received any notices from the bankruptcy court in this case.
☑ Check box if the address differs from the address on the envelope sent to you by the court.

FILED
U.S. Bankruptcy Court
Western District of NC
FEB 28 2007
David E. Weich, Clerk

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor:
20-0051-0245967

Check here ☐ replaces
if this claim ☐ amends a previously filed claim, dated: ______

1. Basis for Claim
☐ Goods sold
☐ Services performed
☑ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☐ Other ___________

☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☐ Wages, salaries, and compensation (fill out below)
Last four digits of SS #:
Unpaid compensation for services performed
from ______ (date) to ______ (date)

2. Date debt was incurred: 8/16/2002

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case was Filed: $

0	135.218.81	0	135218.81
(unsecured)	(secured)	(priority)	(Total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.
☑ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim
☑ Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral:
☑ Real Estate ☐ Motor Vehicle
☐ Other ___________

Value of Collateral: $ 135,218.81
Amount of arrearage and other charges at time case filed included in secured claim, if any: $ 14,789.03

6. Unsecured Nonpriority Claim $ ______
☐ Check this box if a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.

7. Unsecured Priority Claim
☐ Check this box if you have an unsecured priority claim

Amount entitled to priority $ ______

Specify the priority of the claim:
☐ Wages, salaries, or commissions (up to $10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. § 507(a)(3).
☐ Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(4).
☐ Up to $2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(6).
☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child – 11 U.S.C. § 507(a)(7).
☐ Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8).
☐ Other – Specify applicable paragraph of 11 U.S.C. § 507(a)().

** Amounts are subject to adjustment on 4/1/2007 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. $10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8.*

8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

9. Supporting Documents: *Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. If the documents are not available, explain. If the documents are voluminous, attach a summary.

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):
2/28/2007	Filing a proof of claim electronically deems the claim signed by the creditor or authorized person

THIS SPACE IS FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

245967

Disclosure Statement, Note and Security Agreement

Borrower(s) (Name and mailing address)	Lender (Name, address, city and state)	Account No. / Date of Loan
HOYT BURROUGHS SHIRLEY BURROUGHS 5836 LEWIS ROAD GASTONIA NC 28052	CITIFINANCIAL SERVICES, INC. 1744 E. DIXON BLVD. SHELBY NC 28152	Account No. 204412 Date of Loan 08/16/2002

ANNUAL PERCENTAGE RATE The cost of Borrower's credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost Borrower.	Amount Financed The amount of credit provided to Borrower or on Borrower's behalf.	Total of Payments The amount Borrower will have paid after Borrower has made all payments as scheduled.
11.95 %	$ 306,840.28	$ 113,938.76	$ 420,779.04

Payment Schedule:

Number of Payments	* Amount of Payments	When Payments Are Due
1	$ 1,621.41	10/03/2002
359	$ 1,167.57	MONTHLY BEGINNING 11/03/2002
	$	
	$	

See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Security: If checked, Borrower is giving a security interest in:
[X] Real Property [ ] Mobile Home or Manufactured Home

Late Charge: NONE.

Prepayment: If Borrower pays off early, Borrower:
[X] will not [ ] may have to pay a penalty.
[X] will not [ ] may be entitled to a refund of part of the finance charge.

Demand Feature:
[ ] Not Applicable [X] This obligation has a demand feature.

* Does not include any insurance premium.

Additional Information:

Total amount of first month's payment including insurance premium, if any.	PRINCIPAL	FEES	DATE CHARGES BEGIN
$ 1,621.41	$ 113,938.76	$ NONE	08/21/2002

Required Insurance Disclosure:
If Borrower grants Lender a security interest as indicated in this document, insurance to protect the Lender's interest in the collateral may be required. **If this loan is secured by real property, or mobile/manufactured home, then fire, extended coverage, collision and/or comprehensive casualty insurance is required naming Lender as loss payee, until the loan is fully paid.** The amount of such insurance must be sufficient to satisfy the unpaid balance of the loan, or be equal to the value of the collateral, whichever is less. Such insurance may be provided through an existing policy or a policy obtained independently and purchased by Borrower. Borrower may obtain such insurance from any insurer that is reasonably acceptable to Lender.

Optional Insurance Disclosure:
Borrower is not required to purchase optional insurance products, such as: Credit Life, Credit Disability, Involuntary Unemployment Insurance or any other optional insurance products. Lender's decision to grant credit will not be affected by Borrower's decision to purchase or decline to purchase optional insurance.

Coverage will not be provided unless Borrower signs and agrees to pay the applicable monthly premium in addition to the monthly loan payment disclosed above.

Borrower should refer to the terms contained in the applicable certificate or policy of insurance issued for the exact description of benefits, exclusions and premium rates.

If Borrower purchases insurance, Borrower's monthly payment will include both the monthly loan payment disclosed above and the applicable monthly premiums.

I/We request the following insurance:

Premium Due with the First Month's Loan Payment	First Year's Premium *	Insurance Type:
$NONE	$	
$NONE	$	
$NONE	$	

Hoyt Burroughs 8-16-02
First Borrower's Signature Date

Shirley Burroughs 8/16/02
Second Borrower's Signature

(* First year's premiums are calculated on the assumption that monthly loan payments are timely made). The initial term of the insurance is one month. Accrued but unpaid premium, if not paid earlier, will be due and payable at the time of the final payment on the loan. However, failure to pay premiums may result in termination of insurance as described below.

Termination of Insurance:
Borrower may cancel any of the optional insurance products office at any time. The optional insurance will terminate upon the earliest of the following occurrences:

(1) the Lender's receipt of Borrower's written request for termination;
(2) on the date when the sum of past due premiums equal or exceed four times the first month premium;
(3) termination pursuant to the provisions of the insurance certificate;
(4) payment in full of Borrower's Loan;
(5) death of Borrower.

TERMS: In this Disclosure Statement, Note and Security Agreement, the word "Borrower" refers to the persons signing below as Borrower, whether one or more. If more than one borrower signs, each will be responsible, individually and together, for all promises made and for repaying the loan in full. The word "Lender" refers to the lender, whose name and address are shown above.

PROMISE TO PAY: In return for a loan that Borrower has received, Borrower promises to pay to the order of Lender the Principal amount shown above, plus interest on the unpaid Principal balance from the Date Charges Begin shown above at the rate of interest of 11.9496 % per annum. Lender will compute interest on the unpaid Principal balance on a daily basis from the date charges begin until Borrower repays the loan. If Borrower does not make sufficient or timely payments according to the payment schedule above, Borrower will incur greater interest charges on the loan. On the N/A month anniversary of the Date of Loan shown above, the rate of interest applicable to the remaining unpaid principal balance shall decrease to N/A % per annum.

Any amount shown above as Fees has been paid by Borrower as fees. This amount is considered a prepaid charge and is in addition to interest calculated at the above Rate(s) of Interest. Any Fees are earned prior to any other interest on the loan balance. In the event of prepayment of the loan, prepaid Fees will not be refundable to Borrower.

Borrower's Initials: HB SB

HOYT BURROUGHS SHIRLEY BURROUGHS 204412 08/16/2002

Principal and interest shall be payable in the monthly installments shown above, except that any appropriate adjustments will be made to the first and final payments, beginning on the first payment date shown above and continuing on the same day in each following month until paid in full unless this loan is subject to a call provision as indicated, in which event the final payment date may be accelerated. Upon the final payment date or the acceleration thereof, the entire outstanding balance of Principal and interest evidenced by this Disclosure Statement, Note and Security Agreement shall be due and payable. Any payment which Lender accepts after the final payment date or the acceleration thereof does not constitute a renewal or extension of this loan unless Lender so determines.

Each payment shall be applied as follows: (1) monthly loan payments due (first to interest then principal), (2) insurance premiums due, (3) unpaid interest to the date of payment, if any, then (4) principal. Lender may collect interest from and after maturity upon the unpaid Principal balance at the maximum rate permitted under the then applicable law or the rate of interest prevailing at the time of maturity under this Disclosure Statement, Note and Security Agreement.

[X] If this box is checked, the following provision applies:

CALL: Lender, at its option, may declare any remaining indebtedness immediately due and payable 10 years after the date of this loan or annually thereafter on the anniversary of that date.

PREPAYMENT: Borrower may make a full or partial prepayment of the unpaid Principal balance at any time (check applicable box):

[X] without penalty.

[ ] If Borrower prepays the entire outstanding Principal amount of this loan within 30 months of the date of the loan, Lender may charge Borrower a prepayment penalty of 1% of the balance outstanding at the time of the prepayment in full. If prepaid after that date, there will be no prepayment fee.

When Borrower makes a prepayment, Borrower will tell Lender in a letter that Borrower is doing so. Lender will use Borrower's prepayments to reduce the amount of unpaid interest and charges and the amount of principal that Borrower owes under this Note. Partial prepayment will not affect the amount or due date of subsequent scheduled payments on the loan, unless Lender agrees in writing to any such delay or change, but may reduce the number of such payments. Upon partial prepayment, interest will continue to accrue on any remaining Principal balance. Borrower understands if the terms of this paragraph provide for a prepayment penalty, such terms do not apply to a renewal or refinancing of this loan by Lender, nor to the prepayment of this loan from the proceeds of any loan made in the future by Lender to Borrower. No prepayment charge will be collected if the loan is accelerated due to Lender's exercise of any due on sale clause in the Deed of Trust securing this obligation.

SECURITY AGREEMENT:

Security: Borrower's loan is secured by a Mortgage, Deed of Trust or Deed to Secure Debt dated 08/16/2002 on real property located at
5836 LEWIS ROAD GASTONIA, NC 28052
See the Mortgage, Deed of Trust or Deed to Secure Debt for terms applicable to Lender's interest in Borrower's real property ("Property").

TAXES AND FEES: Borrower will pay all taxes, assessments, and other fees payable on the Property. If Borrower fails to pay such amounts, Lender may pay such amounts for Borrower and the amounts paid by Lender will be added to the unpaid balance of the loan.

INSURANCE: If Borrower purchases any insurance at Lender's office, Borrower understands and acknowledges that (1) the insurance company may be affiliated with Lender, (2) Lender's employee(s) may be an agent for the insurance company, (3) such employee(s) is not acting as the agent, broker or fiduciary for Borrower on this loan, but may be the agent of the insurance company, and (4) Lender or the insurance company may realize some benefit from the sale of that insurance. If Borrower fails to obtain or maintain any required insurance or fails to designate an agent through whom the insurance is to be obtained, Lender may purchase such required insurance for Borrower through an agent of Lender's choice, and the amounts paid by Lender will be added to the unpaid balance of the loan.

RETURNED CHECK FEE: Lender may charge a fee of $ 25.00 for a check, negotiable order of withdrawal or draft is returned for insufficient funds or insufficient credit.

LOAN CHARGES: If a law that applies to this loan and that sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then (i) any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Borrower that exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under this loan or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge.

DEFAULT: Borrower will be in default if:

1. Borrower does not make any scheduled payment on time;
2. Borrower is (or any other person puts Borrower) in bankruptcy, insolvency or receivership;
3. Any of Borrower's creditors attempts by legal process to take and keep any property of Borrower, including the Property securing this loan;
4. Borrower fails to fulfill any promise made under this agreement; or
5. A default occurs under any Real Estate Mortgage or Deed of Trust which secures this loan or under any other mortgage or deed of trust on the real property.

Subject to Borrower's right to any notice of default, right to cure default, and any other applicable laws, if Borrower defaults, Lender may require Borrower to repay the entire unpaid Principal balance and any accrued interest at once. Lender's failure to exercise or delay in exercising any of its rights when default occurs does not constitute a waiver of those or any other rights under this agreement. Borrower promises and agrees to pay all costs, charges and expenses, including court costs and reasonable attorney's fees paid to an attorney who is not a salaried employee of Lender, incurred by Lender in any action to collect or enforce this Disclosure Statement, Note and Security Agreement or the Mortgage or Deed of Trust securing this loan.

EFFECTS OF DEFAULT: If Borrower defaults, Borrower will deliver the Property to Lender or, upon Lender's demand, assemble the Property and make it available to Lender at a reasonably convenient place. Lender may, without previous notice or demand and without legal process, peacefully enter any place where the Property is located and take possession of it. Lender does not have to notify Borrower before instituting suit if the note is not paid, and Lender can sue any or all Borrowers upon default of any Borrower.

The Property may be sold with notice at a private or public sale at a location chosen by Lender. At such public sale, Lender may purchase the Property. The proceeds of the sale minus the actual and reasonable costs of taking, removing, holding, repairing, and selling the Property, including reasonable attorney's fees and court costs and minus the cost of paying off and removing any superior liens or claims on the Property, will be credited to the unpaid balance of Borrower's loan. If the proceeds of the sale are not sufficient to pay off the entire balance plus costs, Borrower agrees to pay the remaining amount upon demand. If Borrower has left other property in the repossessed Property, Lender may hold such property temporarily for Borrower without any responsibility or liability for the property. Borrower waives benefit of homestead and exemption laws now in force or later enacted, including stay of execution and condemnation, on any property securing this loan, and waive the benefit of valuation and appraisement.

Notice of the time and place of a public sale or notice of the time after which a private sale will occur is reasonable if mailed to the Borrower's address at least five days before the sale. The notice may be mailed to Borrower's last address shown on Lender's records.

AW THAT APPLIES: North Carolina law and federal law, as applicable, govern this Disclosure Statement, Note and Security Agreement. If any part unenforceable, this will not make any other part unenforceable. In no event will Borrower be required to pay interest or charges in excess of those ermitted by law.

THER RIGHTS: Lender may accept payments after maturity or after a default without waiving its rights with respect to any subsequent default in yment. Borrower agrees that Lender may extend time for payment after maturity without notice. The terms of this agreement can be waived or anged only in a writing signed by Lender.

Borrower's Initials: HB SB

HOYT BURROUGHS SHIRLEY BURROUGHS 204412 08/16/2002

Where the context requires, singular words may be read in the plural and plural words in the singular. References to the masculine gender may be read to apply to the feminine gender.

<u>OTHER TERMS</u>: Each Borrower under this Disclosure Statement, Note and Security Agreement, if more than one, agrees that Lender may obtain approval from one Borrower to change the repayment terms and release any Property securing the loan, or add parties to or release parties from this agreement, without notice to any other Borrower and without releasing any other Borrower from his responsibilities. Lender does not have to notify Borrower before instituting suit if the loan is not paid, and Lender can sue any or all Borrowers upon the default by any Borrower.

Borrower, endorsers, sureties and guarantors, to the extent permitted by law, severally waive their right to require Lender to demand payment of amounts due, to give notice of amounts that have not been paid, to receive notice of any extensions of time to pay which Lender allows to any Borrower and to require Lender to show particular diligence in bringing suit against anyone responsible for repayment of this loan, and additionally, waive benefit of homestead and exemption laws now in force or later enacted, including stay of execution and condemnation, on any Property securing this loan and waive the benefit of valuation and appraisement.

This Disclosure Statement, Note and Security Agreement shall be the joint and several obligation of all makers, sureties, guarantors and endorsers and shall be binding upon them, their heirs, successors, legal representatives and assigns.

<u>REFINANCING</u>: The overall cost of refinancing an existing loan balance may be greater than the cost of keeping the existing loan and obtaining a second loan for any additional funds Borrower wishes to borrow.

NOTICE OF ARBITRATION PROVISION

THIS ARBITRATION PROVISION PROVIDES THAT ALL DISPUTES BETWEEN BORROWER AND LENDER, EXCEPT THOSE SPECIFIED BELOW, WILL BE RESOLVED BY MANDATORY, BINDING ARBITRATION.
YOU THUS GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS (EXCEPT FOR MATTERS THAT ARE EXCLUDED FROM ARBITRATION AS SPECIFIED BELOW).
YOUR RIGHTS WILL BE DETERMINED BY A NEUTRAL ARBITRATOR AND NOT A JUDGE OR JURY.
YOU ARE ENTITLED TO A FAIR HEARING, BUT THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT.

In consideration of Lender making the extension of credit described above and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, You and We agree that either You or We have an absolute right to demand that any Claim be submitted to an arbitrator in accordance with this Arbitration Provision. If either You or We file a lawsuit, counterclaim, or other action in court, the other party has the absolute right to demand arbitration following the filing of such action.

Definitions for Arbitration Provision. As used in this Arbitration Provision ("Provision"), the following definitions will apply:
"You" or "Your" means any or all of Borrower(s) who execute this Disclosure Statement, Note and Security Agreement, and their heirs, survivors, assigns, and representatives.
"We" or "Us" means the Lender under this Disclosure Statement, Note and Security Agreement, American Health & Life Insurance Company, Triton Insurance Company, and any assignee of Lender, together with all of their respective corporate parents, subsidiaries, affiliates, predecessors, assignees, successors, employees, agents, directors, and officers (whether acting in their corporate or individual capacity).
"Credit Transaction" means any one or more past, present, or future extension, application, or inquiry of credit or forbearance of payment such as a loan, retail credit agreement, or otherwise from any of Us to You.
"Claim" means any case, controversy, dispute, tort, disagreement, lawsuit, or claim now or hereafter existing between You and Us. A Claim includes, without limitation, anything related to:

- This Provision, its enforceability, and the arbitrability of any Claim pursuant to this Provision, including but not limited to the scope of this Provision and any defenses to enforcement of this Provision;
- Any Credit Transaction;
- Any past, present, or future insurance, service, or other product that is offered or purchased in connection with a Credit Transaction;
- Any documents or instruments that contain information about any Credit Transaction, insurance, service, or product;
- Any act or omission by any of Us;
- Fraud or misrepresentation, including claims for failing to disclose material facts;
- Any federal or state statute or regulation, or any alleged violation thereof, including without limitation insurance, usury, and lending laws;
- Any party's execution of this Provision and/or willingness to be bound by its terms and provisions; or
- Any dispute about closing, servicing, collecting, or enforcing a Credit Transaction.

Agreement to Arbitrate Claims. Upon written request by either party that is submitted according to the applicable rules for arbitration, any Claim, except those specified below in this Provision, shall be resolved by binding arbitration in accordance with (i) the Federal Arbitration Act, (ii) the Financial Services Arbitration Rules and Procedures of JAMS/Endispute, Inc. ("Administrator"), and (iii) this Provision, unless we both agree in writing to forgo arbitration. The terms of this Provision shall control any inconsistency between the rules of the Administrator and this Provision. You may obtain a copy of the arbitration rules by calling (800) 448-1660 or by accessing the Administrator's internet site at www.jamsadr.com/financial_rules.asp. At Your request, We will obtain and provide to You copies of the Administrator's rules and other materials, including a form Demand for Arbitration. Any party to this Provision may bring an action, including a summary or expedited proceeding, to compel arbitration of any Claim, and/or to stay the litigation of any Claim pending arbitration, in any court having jurisdiction. Such action may be brought at any time, even if a Claim is part of a lawsuit, up until the entry of a final judgment. Pursuant to this Provision, You and We also agree to submit to final, binding arbitration not only all Claims, but also any claim or dispute You or We have against (i) all persons or entities involved with any Credit Transaction or any other matter covered by this Disclosure Statement, Note and Security Agreement, (ii) all persons who signed or executed any document relating to any Credit Transaction or Claim, and (iii) all persons or entities who may be jointly or severally liable to either You or any of Us regarding any Claim.

Judgment. Judgment upon any arbitration award may be entered in any court having jurisdiction. If timely requested by either party, the arbitrator shall provide a brief written statement of the reasons for any award.

Claims Excluded from Arbitration. The following types of matters will not be arbitrated. This means that neither one of us can require the other to arbitrate:

- Any action to effect a foreclosure to transfer title to the property being foreclosed, or exercise of extra-judicial or self-help repossession under applicable law; or
- Any matter where all parties collectively (including multiple named parties) seek monetary relief in the aggregate of $15,000.00 or less in total relief, including but not limited to compensatory, statutory and punitive damages; restitution; disgorgement; costs and fees (including attorneys' fees), or any Claims brought in a small claims court. In the event You attempt to assert any of Your Claims on behalf of a putative class of persons, in violation of other terms in this Provision, the value of Your Claims will, for purposes of this exclusion, be deemed to exceed $15,000.00. In the event that any party fails to specify the amount being sought for any relief, or any form or component of relief, the amount being sought shall, for purposes of this exclusion, be deemed to exceed $15,000.00.

However, should either party initiate arbitration, the other party, at its option, may seek injunctive and monetary relief in arbitration. Participating in a lawsuit or seeking enforcement of this section by a court shall not waive the right to arbitrate any other Claim.

Additional Terms.
<u>Administration of Arbitration</u>. Arbitration shall be administered by the Administrator, but if it is unable or unwilling to administer the arbitration, then the American Arbitration Association will administer any arbitration required under this Provision pursuant to its Commercial Arbitration Rules and Expedited Procedures. The arbitrator shall make his or her decision in accordance with the applicable law, and shall be empowered to award any damages or other relief provided for under the applicable law.
<u>Place of Arbitration</u>. The arbitration shall be conducted in the county of Your residence, unless all parties agree to another location.
<u>Appeal</u>. Either You or We may appeal the arbitrator's award in accordance with the Optional Appeals Procedures of the Administrator, and the award may be subject to judicial review on the grounds stated in 9 U.S.C. § 10.

Borrower's Initials: HB SB

HOYT BURROUGHS SHIRLEY BURROUGHS 204412 08/16/2002

No Class Actions/No Joinder of Parties. You agree that any arbitration proceeding will only consider Your Claims. Claims by or on behalf of other borrowers will not be arbitrated in any proceeding that is considering Your Claims. Because You have agreed to arbitrate all Claims, You may not serve as a class representative or participate as a class member in a putative class action against any party entitled to compel arbitration under this Provision.

Depositions. After a demand for arbitration is made, You and We may conduct a limited number of depositions by mutual agreement. Any disagreements concerning the taking of depositions will be resolved by the arbitrator.

Costs. The cost of any arbitration proceeding shall be divided as follows:

- The party making demand upon the Administrator for arbitration shall pay the initial filing fee up to $125.00 to the Administrator when the demand is made. We will pay any balance.
- We will pay to the Administrator all other costs for the arbitration proceeding up to a maximum of one day (eight hours) of hearings.
- All costs of the arbitration proceeding that exceed one day of hearings will be advanced by the party that initiated the arbitration. To the extent allowed by the applicable arbitration rules and applicable law, the arbitrator may tax or assess costs of the arbitration to any party.
- In the case of an appeal, the appealing party will advance any costs of initiating an appeal. The non-prevailing party shall pay all costs, fees, and expenses of the appeal proceeding and, if applicable, shall reimburse the prevailing party for the cost of filing an appeal.
- Each party shall pay his/her own attorney, expert, and witness fees and expenses, unless otherwise required by law or by other terms of this Disclosure Statement, Note and Security Agreement.

Governing Law. This Provision is governed by federal law and by the laws of the state where the closing of the Credit Transaction took place, but only to the extent that such state laws are consistent or compatible with federal law.

Severability. If the arbitrator or any court determines that one or more terms of this Provision or the arbitration rules are unenforceable, or would make this Provision unenforceable, only such terms(s) shall be deemed unenforceable and shall be deemed stricken from this Provision, but such determination shall not impair or affect the enforceability of the other terms of this Provision or the arbitration rules.

Special Acknowledgments. You understand and acknowledge by signing Your name to this Provision that (i) a court and/or jury will not hear or decide any Claim governed by this Provision, (ii) the funding for Your Credit Transaction will come in whole or in part from sources outside this state, which will constitute interstate commerce within the meaning of the United States Arbitration Act, 9 U.S.C. §§1-9, (iii) discovery in an arbitration proceeding can be much more limited than in a court proceeding, (iv) rights to appeal an arbitration award are very limited, and (v) the rights of the parties hereunder may not be exactly mutual in all respects.

READ THE ABOVE ARBITRATION PROVISION CAREFULLY. IT LIMITS CERTAIN OF YOUR RIGHTS, INCLUDING YOUR RIGHT TO OBTAIN REDRESS THROUGH COURT ACTION.

(Seal)
HOYT BURRODGHS -Borrower
(Seal)
SHIRLEY BURROUGHS -Borrower

The following notice applies only if this box is checked. ☐

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

By signing below, Borrower agrees to the terms contained herein, acknowledges receipt of a copy of this Disclosure Statement, Note and Security Agreement and, if applicable, the Mortgage or Deed of Trust and of the accompanying Itemization of Amount Financed, and authorizes the disbursements stated therein.

WITNESSES:

SIGNED:
(Seal)
HOYT BURROUGHS -Borrower
(Seal)
SHIRLEY BURROUGHS -Borrower
(Seal)
-Borrower

CITIFINANCIAL SERVICES, INC.

By: (Name and Title)

SECURITY INTEREST OF NONOBLIGOR: Borrower only is personally liable for payment of the loan. Nonobligor is liable and bound by all other terms, conditions, covenants, and agreements contained in this Disclosure Statement, Note and Security Agreement, including but not limited to the right and power of Lender to repossess and sell the Property securing this loan, in the event of default by Borrower in payment of this loan.

(Seal) Signature Date

(Seal) Signature Date

BOOK 3511
PAGES 848 - 854
Gaston County, NC
Recorded 08/20/2002 10:40:41am
No 9999-00033716 1 of 7 pages
Alice B. Brown, Register of Deeds

DEED OF TRUST

SATISFACTION: The debt secured by the within Deed of Trust together with the Note secured thereby has been satisfied in full. This the ______ day of ______________, ______. Signed: ______________________ By: ______________________	Recording: Time, Book and Page

Tax Parcel Identifier No. ______________________

This Instrument prepared by: AMANDA L STANDLEY

Mail after recording to: CITIFINANCIAL SERVICES, INC.
1744 E. DIXON BLVD.
SHELBY NC 28152

THIS DEED OF TRUST ("Security Instrument") is made on 08/16/2002 . The grantor is HOYT BURROUGHS SHIRLEY BURROUGHS

("Borrower"). The trustee is
AMANDA L STANDLEY
("Trustee"). The beneficiary is CITIFINANCIAL SERVICES, INC.
, which is a corporation organized and existing under the laws of
Delaware , and whose address is
1744 E. DIXON BLVD. SHELBY NC 28152
("Lender").

Borrower owes Lender the principal sum of
ONE HUNDRED THIRTEEN THOUSAND NINE HUNDRED THIRTY-EIGHT AND 76/100 DOLLARS Dollars (U.S. $ 113,938.76). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on 09/03/2032 . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee and Trustee's successors and assigns, in trust, with power of sale, the following described property located in GASTON County, North Carolina:

(Intentionally Left Blank)

NC25681-5 8/2002 Original (Recorded) Copy (Branch) Copy (Customer) Page 1 of 7

9999-00033716

32.00

HOYT BURROUGHS SHIRLEY BURROUGHS

08/16/2002

ALL THAT CERTAIN PARCEL OF LAND IN THE CITY OF GASTONIA, GASTON COUNTY, STATE OF NORTH CAROLINA, ID # 156452, BEING KNOWN AND DESIGNATED AS LOT 5, OF THE H.L. AMOR ESTATE PROPERTY, FILED IN PLAT BOOK 44, PAGE 84, MORE PARTICULARLY DESCRIBED AS A METES AND BOUNDS PROPERTY.

BY FEE SIMPLE DEED FROM DANNY R. BARBEE, BY AND THROUGH HIS ATTORNEY-IN FACT, CYNTHIA L. BARBEE, POWER OF ATTORNEY RECORDED IN DEED BOOK 3031, PAGE 763, AND WIFE CYNTHIA L. BARBEE, AS SET FORTH IN DEED BOOK 3031 PAGE 765, DATED 12/20/1999 AND RECORDED 12/29/1999 GASTON COUNTY RECORDS, STATE OF NORTH CAROLINA.

TO HAVE AND TO HOLD unto Trustee and Trustee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") equal to one-twelfth of: (a) yearly taxes and assessments which may attain priority over this Security Instrument; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard insurance premiums; and (d) yearly mortgage insurance premiums, if any. These items are called "escrow items." Lender may estimate the Funds due on the basis of current data and reasonable estimates of future escrow items.

The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay the escrow items. Lender may not charge for holding and applying the Funds, analyzing the account or verifying the escrow items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing that interest shall be paid on the Funds. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Security Instrument.

If the amount of the Funds held by Lender, together with the future monthly payments of Funds payable prior to the due dates of the escrow items, shall exceed the amount required to pay the escrow items when due, the excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly payments of Funds. If the amount of the Funds held by Lender is not sufficient to pay the escrow items when due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as required by Lender.

HOYT BURROUGHS SHIRLEY BURROUGHS

08/16/2002

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 19 the Property is sold or acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to late charges due under the Note; second, to prepayment charges due under the Note; third, to amounts payable under paragraph 2; fourth, to interest due; and last, to principal due.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 19 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Preservation and Maintenance of Property; Leaseholds.** Borrower shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquires fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

7. **Protection of Lender's Rights in the Property; Mortgage Insurance.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums

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secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amount disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the insurance in effect until such time as the requirement for the insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

8. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

10. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

12. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

13. Legislation Affecting Lender's Rights. If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by paragraph 19. If Lender exercises this option, Lender shall take the steps specified in the second paragraph of paragraph 17.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note had no acceleration occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraphs 13 or 17.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

19. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in the Security Instrument (but not prior to acceleration under paragraph 13 and 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 19, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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HOYT BURROUGHS SHIRLEY BURROUGHS

08/16/2002

If Lender invokes the power of sale, and if it is determined in a hearing held in accordance with applicable law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as applicable law may require. After the time required by applicable law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to the expenses of the sale, including, but not limited to, Trustee's fees of 5 % of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

20. **Lender in Possession.** Upon acceleration under paragraph 19 or abandonment of the Property, Lender (in person, by agent or by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument.

21. **Release.** Upon payment of all sums secured by this Security Instrument, Lender or Trustee shall cancel this Security Instrument without charge to Borrower. If Trustee is requested to release this Security Instrument, all notes evidencing debt secured by this Security Instrument shall be surrendered to Trustee. Borrower shall pay any recordation costs.

22. **Substitute Trustee.** Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

23. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

24. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 24, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 24, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

BY SIGNING UNDER SEAL BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Hoyt Burroughs (Seal) -Borrower

Shirley Burroughs (Seal) -Borrower

FORM B10 (Official Form 10) (04/05)

UNITED STATES BANKRUPTCY COURT *WESTERN DISTRICT OF NORTH...

PROOF OF CLAIM

Name of Debtor
HOYT BURROUGHS -- SS No. XXX-XX-5775
SHIRLEY BURROUGHS -- SS No. XXX-XX-7442

Case Number
07-30139

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):
CitiFinancial, Inc.

Name and address where notices should be sent:
CitiFinancial, Inc.
PO Box 70919
Charlotte, NC 28272-0919

Telephone number: (888)701-6280

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
☐ Check box if you have never received any notices from the bankruptcy court in this case.
x Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor:
20-0051-0245967

Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated: ________

1. Basis for Claim
Goods sold
Services performed
x Money loaned
Personal injury/wrongful death
Taxes
Other ________

☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☐ Wages, salaries, and compensation (fill out below)
Last four digits of SS # : ________
Unpaid compensation for services performed
from ________ (date) to ________ (date)

2. Date debt was incurred:
08/16/2002

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: $ 0 (Unsecured) 135,218.81 (Secured) 0 (Priority) 135,218.81 (Total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.
☒ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.
x Check this box if your claim is secured by collateral (including a right of setoff)
Brief Description of Collateral:
x Real Estate ☐ Motor Vehicle
Other ________
Value of Collateral: $ ________
Amount of arrearage and other charges <u>at time case filed</u> included in secured claim, if any: $ 14,789.03

6. Unsecured Nonpriority Claim $ ________
Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.

7. Unsecured Priority Claim.
☐ Check this box if you have an unsecured priority claim
Amount entitled to priority $________
Specify the priority of the claim:
☐ Wages, salaries, or commissions (up to $10,000),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507 (a) (3).
☐ Contributions to an employee benefit plan - 11 U.S.C. § 507 (a) (4).
☐ Up to $2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a) (6).
☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507 (a) (7).
☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a) (8).
☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(________).

**Amounts are subject to adjustment on 4 1 07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. Interim adjustment pursuant to Public Law No. 109-8, enacted 4 20 2005*

8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

9. Supporting Documents: **Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

10. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

Date
02/26/2007

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

/ S / David Barnett

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Exhibit 'A'

Case No.: 07-30139

Debtors: HOYT BURROUGHS -- SS No. XXX-XX-5775
SHIRLEY BURROUGHS -- SS No. XXX-XX-7442

Address: 5836 LEWIS ROAD
GASTONIA, NC 28052-

Loan No.: 20-0051-0245967

On filing petition 01/22/07 debtor(s) owed claimant $135,218.81.

ARREARAGES owed as of 01/22/07, the date of filing of the petition.

From	To	Type of Charge	#	Unit Charge	Total
01/03/2006	01/03/2006	Payment	1	705.11	705.11
02/03/2006	01/03/2007	Payment	12	1,167.41	14,008.92
		NSF Charges	-	-	75.00
			-	-	-
				Subtotal:	14,789.03
				TOTAL:	**14,789.03**

The above figures represent the delinquency at the time of filing and do not reflect payments received after the date of the filing of the bankruptcy.
Late charges accrue to the account when payments are received 15 days past the payment due date.

CitiFinancial, Inc.
P.O. Box 140069
Irving, TX 75014-0069
Phone: 888-701-6280
Fax: 972-657-1973

February 26, 2007

Clerk, United States Bankruptcy Court
*WESTERN DISTRICT OF NORTH CAROLINA,
CHARLOTTE DIVISION
Po Box 30097
Charlotte, NC 282300097

RE: CITIFINANCIAL SERVICES, INC.
Account # 20-0051-0245967
Bk Case # 07-30139
Borrower(s): HOYT BURROUGHS & SHIRLEY BURROUGHS

Bankruptcy Clerk:

Enclosed please find an original Proof of Claim on the above referenced case to be filed with the Court. I have enclosed a stamped self-addressed envelope and a copy of our claim to be returned and serve as acknowledgment of receipt.

Please list CitiFinancial, Inc. on the matrix so that we may receive a copy of any hearings or other motions that may occur in regards to this case.

Please forward all payments to:

CitiFinancial, Inc.
P.O. Box 70919
Charlotte, NC 28272-0919

Thank you for your consideration in this matter.

Sincerely,

David Barnett

Enclosure

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Compound Period .... : Monthly

Nominal Annual Rate .... : 11.924 %

CASH FLOW DATA

	Event	Date	Amount	Number	Period	End Date
1	Loan	08/16/2002	113,938.76	1		
2	Payment	10/03/2002	1,621.41	1		
3	Payment	11/03/2002	1,167.57	359	Monthly	09/03/2032

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	08/16/2002				113,938.76
1	10/03/2002	1,621.41	1,808.80	187.39-	114,126.15
2	11/03/2002	1,167.57	1,134.02	33.55	114,092.60
3	12/03/2002	1,167.57	1,133.69	33.88	114,058.72
2002 Totals		3,956.55	4,076.51	119.96-	
4	01/03/2003	1,167.57	1,133.35	34.22	114,024.50
5	02/03/2003	1,167.57	1,133.01	34.56	113,989.94
6	03/03/2003	1,167.57	1,132.67	34.90	113,955.04
7	04/03/2003	1,167.57	1,132.32	35.25	113,919.79
8	05/03/2003	1,167.57	1,131.97	35.60	113,884.19
9	06/03/2003	1,167.57	1,131.61	35.96	113,848.23
10	07/03/2003	1,167.57	1,131.26	36.31	113,811.92
11	08/03/2003	1,167.57	1,130.90	36.67	113,775.25
12	09/03/2003	1,167.57	1,130.53	37.04	113,738.21
13	10/03/2003	1,167.57	1,130.16	37.41	113,700.80
14	11/03/2003	1,167.57	1,129.79	37.78	113,663.02
15	12/03/2003	1,167.57	1,129.42	38.15	113,624.87
2003 Totals		14,010.84	13,576.99	433.85	
16	01/03/2004	1,167.57	1,129.04	38.53	113,586.34
17	02/03/2004	1,167.57	1,128.66	38.91	113,547.43
18	03/03/2004	1,167.57	1,128.27	39.30	113,508.13
19	04/03/2004	1,167.57	1,127.88	39.69	113,468.44
20	05/03/2004	1,167.57	1,127.48	40.09	113,428.35
21	06/03/2004	1,167.57	1,127.09	40.48	113,387.87
22	07/03/2004	1,167.57	1,126.68	40.89	113,346.98
23	08/03/2004	1,167.57	1,126.28	41.29	113,305.69
24	09/03/2004	1,167.57	1,125.87	41.70	113,263.99
25	10/03/2004	1,167.57	1,125.45	42.12	113,221.87
26	11/03/2004	1,167.57	1,125.03	42.54	113,179.33
27	12/03/2004	1,167.57	1,124.61	42.96	113,136.37
2004 Totals		14,010.84	13,522.34	488.50	
28	01/03/2005	1,167.57	1,124.18	43.39	113,092.98
29	02/03/2005	1,167.57	1,123.75	43.82	113,049.16
30	03/03/2005	1,167.57	1,123.32	44.25	113,004.91

	Date	Payment	Interest	Principal	Balance
31	04/03/2005	1,167.57	1,122.88	44.69	112,960.22
32	05/03/2005	1,167.57	1,122.43	45.14	112,915.08
33	06/03/2005	1,167.57	1,121.99	45.58	112,869.50
34	07/03/2005	1,167.57	1,121.53	46.04	112,823.46
35	08/03/2005	1,167.57	1,121.07	46.50	112,776.96
36	09/03/2005	1,167.57	1,120.61	46.96	112,730.00
37	10/03/2005	1,167.57	1,120.15	47.42	112,682.58
38	11/03/2005	1,167.57	1,119.67	47.90	112,634.68
39	12/03/2005	1,167.57	1,119.20	48.37	112,586.31
2005 Totals		14,010.84	13,460.78	550.06	
40	01/03/2006	1,167.57	1,118.72	48.85	112,537.46
41	02/03/2006	1,167.57	1,118.23	49.34	112,488.12
42	03/03/2006	1,167.57	1,117.74	49.83	112,438.29
43	04/03/2006	1,167.57	1,117.25	50.32	112,387.97
44	05/03/2006	1,167.57	1,116.75	50.82	112,337.15
45	06/03/2006	1,167.57	1,116.24	51.33	112,285.82
46	07/03/2006	1,167.57	1,115.73	51.84	112,233.98
47	08/03/2006	1,167.57	1,115.22	52.35	112,181.63
48	09/03/2006	1,167.57	1,114.70	52.87	112,128.76
49	10/03/2006	1,167.57	1,114.17	53.40	112,075.36
50	11/03/2006	1,167.57	1,113.64	53.93	112,021.43
51	12/03/2006	1,167.57	1,113.11	54.46	111,966.97
2006 Totals		14,010.84	13,391.50	619.34	
52	01/03/2007	1,167.57	1,112.56	55.01	111,911.96
53	02/03/2007	1,167.57	1,112.02	55.55	111,856.41
54	03/03/2007	1,167.57	1,111.47	56.10	111,800.31
55	04/03/2007	1,167.57	1,110.91	56.66	111,743.65
56	05/03/2007	1,167.57	1,110.35	57.22	111,686.43
57	06/03/2007	1,167.57	1,109.78	57.79	111,628.64
58	07/03/2007	1,167.57	1,109.20	58.37	111,570.27
59	08/03/2007	1,167.57	1,108.62	58.95	111,511.32
60	09/03/2007	1,167.57	1,108.04	59.53	111,451.79
61	10/03/2007	1,167.57	1,107.45	60.12	111,391.67
62	11/03/2007	1,167.57	1,106.85	60.72	111,330.95
63	12/03/2007	1,167.57	1,106.24	61.33	111,269.62
2007 Totals		14,010.84	13,313.49	697.35	
64	01/03/2008	1,167.57	1,105.63	61.94	111,207.68
65	02/03/2008	1,167.57	1,105.02	62.55	111,145.13
66	03/03/2008	1,167.57	1,104.40	63.17	111,081.96
67	04/03/2008	1,167.57	1,103.77	63.80	111,018.16
68	05/03/2008	1,167.57	1,103.14	64.43	110,953.73
69	06/03/2008	1,167.57	1,102.50	65.07	110,888.66
70	07/03/2008	1,167.57	1,101.85	65.72	110,822.94
71	08/03/2008	1,167.57	1,101.20	66.37	110,756.57
72	09/03/2008	1,167.57	1,100.54	67.03	110,689.54
73	10/03/2008	1,167.57	1,099.87	67.70	110,621.84
74	11/03/2008	1,167.57	1,099.20	68.37	110,553.47
75	12/03/2008	1,167.57	1,098.52	69.05	110,484.42

	Date	Payment	Interest	Principal	Balance
2008 Totals		14,010.84	13,225.64	785.20	
76	01/03/2009	1,167.57	1,097.83	69.74	110,414.68
77	02/03/2009	1,167.57	1,097.14	70.43	110,344.25
78	03/03/2009	1,167.57	1,096.44	71.13	110,273.12
79	04/03/2009	1,167.57	1,095.73	71.84	110,201.28
80	05/03/2009	1,167.57	1,095.02	72.55	110,128.73
81	06/03/2009	1,167.57	1,094.30	73.27	110,055.46
82	07/03/2009	1,167.57	1,093.57	74.00	109,981.46
83	08/03/2009	1,167.57	1,092.84	74.73	109,906.73
84	09/03/2009	1,167.57	1,092.09	75.48	109,831.25
85	10/03/2009	1,167.57	1,091.34	76.23	109,755.02
86	11/03/2009	1,167.57	1,090.58	76.99	109,678.03
87	12/03/2009	1,167.57	1,089.82	77.75	109,600.28
2009 Totals		14,010.84	13,126.70	884.14	
88	01/03/2010	1,167.57	1,089.05	78.52	109,521.76
89	02/03/2010	1,167.57	1,088.27	79.30	109,442.46
90	03/03/2010	1,167.57	1,087.48	80.09	109,362.37
91	04/03/2010	1,167.57	1,086.68	80.89	109,281.48
92	05/03/2010	1,167.57	1,085.88	81.69	109,199.79
93	06/03/2010	1,167.57	1,085.07	82.50	109,117.29
94	07/03/2010	1,167.57	1,084.25	83.32	109,033.97
95	08/03/2010	1,167.57	1,083.42	84.15	108,949.82
96	09/03/2010	1,167.57	1,082.58	84.99	108,864.83
97	10/03/2010	1,167.57	1,081.74	85.83	108,779.00
98	11/03/2010	1,167.57	1,080.89	86.68	108,692.32
99	12/03/2010	1,167.57	1,080.03	87.54	108,604.78
2010 Totals		14,010.84	13,015.34	995.50	
100	01/03/2011	1,167.57	1,079.16	88.41	108,516.37
101	02/03/2011	1,167.57	1,078.28	89.29	108,427.08
102	03/03/2011	1,167.57	1,077.39	90.18	108,336.90
103	04/03/2011	1,167.57	1,076.49	91.08	108,245.82
104	05/03/2011	1,167.57	1,075.59	91.98	108,153.84
105	06/03/2011	1,167.57	1,074.67	92.90	108,060.94
106	07/03/2011	1,167.57	1,073.75	93.82	107,967.12
107	08/03/2011	1,167.57	1,072.82	94.75	107,872.37
108	09/03/2011	1,167.57	1,071.88	95.69	107,776.68
109	10/03/2011	1,167.57	1,070.93	96.64	107,680.04
110	11/03/2011	1,167.57	1,069.97	97.60	107,582.44
111	12/03/2011	1,167.57	1,069.00	98.57	107,483.87
2011 Totals		14,010.84	12,889.93	1,120.91	
112	01/03/2012	1,167.57	1,068.02	99.55	107,384.32
113	02/03/2012	1,167.57	1,067.03	100.54	107,283.78
114	03/03/2012	1,167.57	1,066.03	101.54	107,182.24
115	04/03/2012	1,167.57	1,065.02	102.55	107,079.69
116	05/03/2012	1,167.57	1,064.00	103.57	106,976.12
117	06/03/2012	1,167.57	1,062.97	104.60	106,871.52
118	07/03/2012	1,167.57	1,061.93	105.64	106,765.88

	Date	Payment	Interest	Principal	Balance
119	08/03/2012	1,167.57	1,060.88	106.69	106,659.19
120	09/03/2012	1,167.57	1,059.82	107.75	106,551.44
121	10/03/2012	1,167.57	1,058.75	108.82	106,442.62
122	11/03/2012	1,167.57	1,057.67	109.90	106,332.72
123	12/03/2012	1,167.57	1,056.58	110.99	106,221.73
2012 Totals		14,010.84	12,748.70	1,262.14	
124	01/03/2013	1,167.57	1,055.48	112.09	106,109.64
125	02/03/2013	1,167.57	1,054.36	113.21	105,996.43
126	03/03/2013	1,167.57	1,053.24	114.33	105,882.10
127	04/03/2013	1,167.57	1,052.10	115.47	105,766.63
128	05/03/2013	1,167.57	1,050.95	116.62	105,650.01
129	06/03/2013	1,167.57	1,049.80	117.77	105,532.24
130	07/03/2013	1,167.57	1,048.63	118.94	105,413.30
131	08/03/2013	1,167.57	1,047.44	120.13	105,293.17
132	09/03/2013	1,167.57	1,046.25	121.32	105,171.85
133	10/03/2013	1,167.57	1,045.04	122.53	105,049.32
134	11/03/2013	1,167.57	1,043.83	123.74	104,925.58
135	12/03/2013	1,167.57	1,042.60	124.97	104,800.61
2013 Totals		14,010.84	12,589.72	1,421.12	
136	01/03/2014	1,167.57	1,041.36	126.21	104,674.40
137	02/03/2014	1,167.57	1,040.10	127.47	104,546.93
138	03/03/2014	1,167.57	1,038.83	128.74	104,418.19
139	04/03/2014	1,167.57	1,037.56	130.01	104,288.18
140	05/03/2014	1,167.57	1,036.26	131.31	104,156.87
141	06/03/2014	1,167.57	1,034.96	132.61	104,024.26
142	07/03/2014	1,167.57	1,033.64	133.93	103,890.33
143	08/03/2014	1,167.57	1,032.31	135.26	103,755.07
144	09/03/2014	1,167.57	1,030.97	136.60	103,618.47
145	10/03/2014	1,167.57	1,029.61	137.96	103,480.51
146	11/03/2014	1,167.57	1,028.24	139.33	103,341.18
147	12/03/2014	1,167.57	1,026.85	140.72	103,200.46
2014 Totals		14,010.84	12,410.69	1,600.15	
148	01/03/2015	1,167.57	1,025.46	142.11	103,058.35
149	02/03/2015	1,167.57	1,024.04	143.53	102,914.82
150	03/03/2015	1,167.57	1,022.62	144.95	102,769.87
151	04/03/2015	1,167.57	1,021.18	146.39	102,623.48
152	05/03/2015	1,167.57	1,019.72	147.85	102,475.63
153	06/03/2015	1,167.57	1,018.25	149.32	102,326.31
154	07/03/2015	1,167.57	1,016.77	150.80	102,175.51
155	08/03/2015	1,167.57	1,015.27	152.30	102,023.21
156	09/03/2015	1,167.57	1,013.76	153.81	101,869.40
157	10/03/2015	1,167.57	1,012.23	155.34	101,714.06
158	11/03/2015	1,167.57	1,010.69	156.88	101,557.18
159	12/03/2015	1,167.57	1,009.13	158.44	101,398.74
2015 Totals		14,010.84	12,209.12	1,801.72	
160	01/03/2016	1,167.57	1,007.55	160.02	101,238.72
161	02/03/2016	1,167.57	1,005.96	161.61	101,077.11

	Date	Payment	Interest	Principal	Balance
162	03/03/2016	1,167.57	1,004.36	163.21	100,913.90
163	04/03/2016	1,167.57	1,002.73	164.84	100,749.06
164	05/03/2016	1,167.57	1,001.10	166.47	100,582.59
165	06/03/2016	1,167.57	999.44	168.13	100,414.46
166	07/03/2016	1,167.57	997.77	169.80	100,244.66
167	08/03/2016	1,167.57	996.08	171.49	100,073.17
168	09/03/2016	1,167.57	994.38	173.19	99,899.98
169	10/03/2016	1,167.57	992.66	174.91	99,725.07
170	11/03/2016	1,167.57	990.92	176.65	99,548.42
171	12/03/2016	1,167.57	989.17	178.40	99,370.02
2016 Totals		14,010.84	11,982.12	2,028.72	
172	01/03/2017	1,167.57	987.39	180.18	99,189.84
173	02/03/2017	1,167.57	985.60	181.97	99,007.87
174	03/03/2017	1,167.57	983.80	183.77	98,824.10
175	04/03/2017	1,167.57	981.97	185.60	98,638.50
176	05/03/2017	1,167.57	980.13	187.44	98,451.06
177	06/03/2017	1,167.57	978.26	189.31	98,261.75
178	07/03/2017	1,167.57	976.38	191.19	98,070.56
179	08/03/2017	1,167.57	974.48	193.09	97,877.47
180	09/03/2017	1,167.57	972.56	195.01	97,682.46
181	10/03/2017	1,167.57	970.63	196.94	97,485.52
182	11/03/2017	1,167.57	968.67	198.90	97,286.62
183	12/03/2017	1,167.57	966.69	200.88	97,085.74
2017 Totals		14,010.84	11,726.56	2,284.28	
184	01/03/2018	1,167.57	964.70	202.87	96,882.87
185	02/03/2018	1,167.57	962.68	204.89	96,677.98
186	03/03/2018	1,167.57	960.64	206.93	96,471.05
187	04/03/2018	1,167.57	958.59	208.98	96,262.07
188	05/03/2018	1,167.57	956.51	211.06	96,051.01
189	06/03/2018	1,167.57	954.41	213.16	95,837.85
190	07/03/2018	1,167.57	952.30	215.27	95,622.58
191	08/03/2018	1,167.57	950.16	217.41	95,405.17
192	09/03/2018	1,167.57	948.00	219.57	95,185.60
193	10/03/2018	1,167.57	945.82	221.75	94,963.85
194	11/03/2018	1,167.57	943.61	223.96	94,739.89
195	12/03/2018	1,167.57	941.39	226.18	94,513.71
2018 Totals		14,010.84	11,438.81	2,572.03	
196	01/03/2019	1,167.57	939.14	228.43	94,285.28
197	02/03/2019	1,167.57	936.87	230.70	94,054.58
198	03/03/2019	1,167.57	934.58	232.99	93,821.59
199	04/03/2019	1,167.57	932.26	235.31	93,586.28
200	05/03/2019	1,167.57	929.92	237.65	93,348.63
201	06/03/2019	1,167.57	927.56	240.01	93,108.62
202	07/03/2019	1,167.57	925.18	242.39	92,866.23
203	08/03/2019	1,167.57	922.77	244.80	92,621.43
204	09/03/2019	1,167.57	920.34	247.23	92,374.20
205	10/03/2019	1,167.57	917.88	249.69	92,124.51
206	11/03/2019	1,167.57	915.40	252.17	91,872.34

	Date	Payment	Interest	Principal	Balance
207	12/03/2019	1,167.57	912.89	254.68	91,617.66
2019 Totals		14,010.84	11,114.79	2,896.05	
208	01/03/2020	1,167.57	910.36	257.21	91,360.45
209	02/03/2020	1,167.57	907.81	259.76	91,100.69
210	03/03/2020	1,167.57	905.23	262.34	90,838.35
211	04/03/2020	1,167.57	902.62	264.95	90,573.40
212	05/03/2020	1,167.57	899.99	267.58	90,305.82
213	06/03/2020	1,167.57	897.33	270.24	90,035.58
214	07/03/2020	1,167.57	894.64	272.93	89,762.65
215	08/03/2020	1,167.57	891.93	275.64	89,487.01
216	09/03/2020	1,167.57	889.19	278.38	89,208.63
217	10/03/2020	1,167.57	886.42	281.15	88,927.48
218	11/03/2020	1,167.57	883.63	283.94	88,643.54
219	12/03/2020	1,167.57	880.81	286.76	88,356.78
2020 Totals		14,010.84	10,749.96	3,260.88	
220	01/03/2021	1,167.57	877.96	289.61	88,067.17
221	02/03/2021	1,167.57	875.08	292.49	87,774.68
222	03/03/2021	1,167.57	872.18	295.39	87,479.29
223	04/03/2021	1,167.57	869.24	298.33	87,180.96
224	05/03/2021	1,167.57	866.28	301.29	86,879.67
225	06/03/2021	1,167.57	863.28	304.29	86,575.38
226	07/03/2021	1,167.57	860.26	307.31	86,268.07
227	08/03/2021	1,167.57	857.21	310.36	85,957.71
228	09/03/2021	1,167.57	854.12	313.45	85,644.26
229	10/03/2021	1,167.57	851.01	316.56	85,327.70
230	11/03/2021	1,167.57	847.86	319.71	85,007.99
231	12/03/2021	1,167.57	844.69	322.88	84,685.11
2021 Totals		14,010.84	10,339.17	3,671.67	
232	01/03/2022	1,167.57	841.48	326.09	84,359.02
233	02/03/2022	1,167.57	838.24	329.33	84,029.69
234	03/03/2022	1,167.57	834.96	332.61	83,697.08
235	04/03/2022	1,167.57	831.66	335.91	83,361.17
236	05/03/2022	1,167.57	828.32	339.25	83,021.92
237	06/03/2022	1,167.57	824.95	342.62	82,679.30
238	07/03/2022	1,167.57	821.55	346.02	82,333.28
239	08/03/2022	1,167.57	818.11	349.46	81,983.82
240	09/03/2022	1,167.57	814.64	352.93	81,630.89
241	10/03/2022	1,167.57	811.13	356.44	81,274.45
242	11/03/2022	1,167.57	807.59	359.98	80,914.47
243	12/03/2022	1,167.57	804.01	363.56	80,550.91
2022 Totals		14,010.84	9,876.64	4,134.20	
244	01/03/2023	1,167.57	800.40	367.17	80,183.74
245	02/03/2023	1,167.57	796.75	370.82	79,812.92
246	03/03/2023	1,167.57	793.06	374.51	79,438.41
247	04/03/2023	1,167.57	789.34	378.23	79,060.18
248	05/03/2023	1,167.57	785.58	381.99	78,678.19
249	06/03/2023	1,167.57	781.79	385.78	78,292.41

	Date	Payment	Interest	Principal	Balance
250	07/03/2023	1,167.57	777.96	389.61	77,902.80
251	08/03/2023	1,167.57	774.08	393.49	77,509.31
252	09/03/2023	1,167.57	770.17	397.40	77,111.91
253	10/03/2023	1,167.57	766.23	401.34	76,710.57
254	11/03/2023	1,167.57	762.24	405.33	76,305.24
255	12/03/2023	1,167.57	758.21	409.36	75,895.88
2023 Totals		14,010.84	9,355.81	4,655.03	
256	01/03/2024	1,167.57	754.14	413.43	75,482.45
257	02/03/2024	1,167.57	750.03	417.54	75,064.91
258	03/03/2024	1,167.57	745.89	421.68	74,643.23
259	04/03/2024	1,167.57	741.70	425.87	74,217.36
260	05/03/2024	1,167.57	737.46	430.11	73,787.25
261	06/03/2024	1,167.57	733.19	434.38	73,352.87
262	07/03/2024	1,167.57	728.87	438.70	72,914.17
263	08/03/2024	1,167.57	724.51	443.06	72,471.11
264	09/03/2024	1,167.57	720.11	447.46	72,023.65
265	10/03/2024	1,167.57	715.67	451.90	71,571.75
266	11/03/2024	1,167.57	711.18	456.39	71,115.36
267	12/03/2024	1,167.57	706.64	460.93	70,654.43
2024 Totals		14,010.84	8,769.39	5,241.45	
268	01/03/2025	1,167.57	702.06	465.51	70,188.92
269	02/03/2025	1,167.57	697.43	470.14	69,718.78
270	03/03/2025	1,167.57	692.76	474.81	69,243.97
271	04/03/2025	1,167.57	688.05	479.52	68,764.45
272	05/03/2025	1,167.57	683.28	484.29	68,280.16
273	06/03/2025	1,167.57	678.47	489.10	67,791.06
274	07/03/2025	1,167.57	673.61	493.96	67,297.10
275	08/03/2025	1,167.57	668.70	498.87	66,798.23
276	09/03/2025	1,167.57	663.74	503.83	66,294.40
277	10/03/2025	1,167.57	658.74	508.83	65,785.57
278	11/03/2025	1,167.57	653.68	513.89	65,271.68
279	12/03/2025	1,167.57	648.57	519.00	64,752.68
2025 Totals		14,010.84	8,109.09	5,901.75	
280	01/03/2026	1,167.57	643.42	524.15	64,228.53
281	02/03/2026	1,167.57	638.21	529.36	63,699.17
282	03/03/2026	1,167.57	632.95	534.62	63,164.55
283	04/03/2026	1,167.57	627.64	539.93	62,624.62
284	05/03/2026	1,167.57	622.27	545.30	62,079.32
285	06/03/2026	1,167.57	616.85	550.72	61,528.60
286	07/03/2026	1,167.57	611.38	556.19	60,972.41
287	08/03/2026	1,167.57	605.85	561.72	60,410.69
288	09/03/2026	1,167.57	600.27	567.30	59,843.39
289	10/03/2026	1,167.57	594.64	572.93	59,270.46
290	11/03/2026	1,167.57	588.94	578.63	58,691.83
291	12/03/2026	1,167.57	583.19	584.38	58,107.45
2026 Totals		14,010.84	7,365.61	6,645.23	
292	01/03/2027	1,167.57	577.39	590.18	57,517.27

	Date	Payment	Interest	Principal	Balance
293	02/03/2027	1,167.57	571.52	596.05	56,921.22
294	03/03/2027	1,167.57	565.60	601.97	56,319.25
295	04/03/2027	1,167.57	559.62	607.95	55,711.30
296	05/03/2027	1,167.57	553.58	613.99	55,097.31
297	06/03/2027	1,167.57	547.48	620.09	54,477.22
298	07/03/2027	1,167.57	541.31	626.26	53,850.96
299	08/03/2027	1,167.57	535.09	632.48	53,218.48
300	09/03/2027	1,167.57	528.81	638.76	52,579.72
301	10/03/2027	1,167.57	522.46	645.11	51,934.61
302	11/03/2027	1,167.57	516.05	651.52	51,283.09
303	12/03/2027	1,167.57	509.58	657.99	50,625.10
2027 Totals		14,010.84	6,528.49	7,482.35	
304	01/03/2028	1,167.57	503.04	664.53	49,960.57
305	02/03/2028	1,167.57	496.44	671.13	49,289.44
306	03/03/2028	1,167.57	489.77	677.80	48,611.64
307	04/03/2028	1,167.57	483.03	684.54	47,927.10
308	05/03/2028	1,167.57	476.23	691.34	47,235.76
309	06/03/2028	1,167.57	469.36	698.21	46,537.55
310	07/03/2028	1,167.57	462.42	705.15	45,832.40
311	08/03/2028	1,167.57	455.42	712.15	45,120.25
312	09/03/2028	1,167.57	448.34	719.23	44,401.02
313	10/03/2028	1,167.57	441.19	726.38	43,674.64
314	11/03/2028	1,167.57	433.97	733.60	42,941.04
315	12/03/2028	1,167.57	426.69	740.88	42,200.16
2028 Totals		14,010.84	5,585.90	8,424.94	
316	01/03/2029	1,167.57	419.32	748.25	41,451.91
317	02/03/2029	1,167.57	411.89	755.68	40,696.23
318	03/03/2029	1,167.57	404.38	763.19	39,933.04
319	04/03/2029	1,167.57	396.80	770.77	39,162.27
320	05/03/2029	1,167.57	389.14	778.43	38,383.84
321	06/03/2029	1,167.57	381.40	786.17	37,597.67
322	07/03/2029	1,167.57	373.59	793.98	36,803.69
323	08/03/2029	1,167.57	365.70	801.87	36,001.82
324	09/03/2029	1,167.57	357.73	809.84	35,191.98
325	10/03/2029	1,167.57	349.69	817.88	34,374.10
326	11/03/2029	1,167.57	341.56	826.01	33,548.09
327	12/03/2029	1,167.57	333.35	834.22	32,713.87
2029 Totals		14,010.84	4,524.55	9,486.29	
328	01/03/2030	1,167.57	325.06	842.51	31,871.36
329	02/03/2030	1,167.57	316.69	850.88	31,020.48
330	03/03/2030	1,167.57	308.24	859.33	30,161.15
331	04/03/2030	1,167.57	299.70	867.87	29,293.28
332	05/03/2030	1,167.57	291.07	876.50	28,416.78
333	06/03/2030	1,167.57	282.36	885.21	27,531.57
334	07/03/2030	1,167.57	273.57	894.00	26,637.57
335	08/03/2030	1,167.57	264.69	902.88	25,734.69
336	09/03/2030	1,167.57	255.71	911.86	24,822.83
337	10/03/2030	1,167.57	246.65	920.92	23,901.91

	Date	Payment	Interest	Principal	Balance
338	11/03/2030	1,167.57	237.50	930.07	22,971.84
339	12/03/2030	1,167.57	228.26	939.31	22,032.53
2030 Totals		14,010.84	3,329.50	10,681.34	
340	01/03/2031	1,167.57	218.93	948.64	21,083.89
341	02/03/2031	1,167.57	209.50	958.07	20,125.82
342	03/03/2031	1,167.57	199.98	967.59	19,158.23
343	04/03/2031	1,167.57	190.37	977.20	18,181.03
344	05/03/2031	1,167.57	180.66	986.91	17,194.12
345	06/03/2031	1,167.57	170.85	996.72	16,197.40
346	07/03/2031	1,167.57	160.95	1,006.62	15,190.78
347	08/03/2031	1,167.57	150.94	1,016.63	14,174.15
348	09/03/2031	1,167.57	140.84	1,026.73	13,147.42
349	10/03/2031	1,167.57	130.64	1,036.93	12,110.49
350	11/03/2031	1,167.57	120.34	1,047.23	11,063.26
351	12/03/2031	1,167.57	109.93	1,057.64	10,005.62
2031 Totals		14,010.84	1,983.93	12,026.91	
352	01/03/2032	1,167.57	99.42	1,068.15	8,937.47
353	02/03/2032	1,167.57	88.81	1,078.76	7,858.71
354	03/03/2032	1,167.57	78.09	1,089.48	6,769.23
355	04/03/2032	1,167.57	67.26	1,100.31	5,668.92
356	05/03/2032	1,167.57	56.33	1,111.24	4,557.68
357	06/03/2032	1,167.57	45.29	1,122.28	3,435.40
358	07/03/2032	1,167.57	34.14	1,133.43	2,301.97
359	08/03/2032	1,167.57	22.87	1,144.70	1,157.27
360	09/03/2032	1,167.57	10.30	1,157.27	0.00
2032 Totals		10,508.13	502.51	10,005.62	
Grand Totals		420,779.04	306,840.28	113,938.76	

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Compound Period .....: Monthly

Nominal Annual Rate .:	6.000	%
Effective Annual Rate :	6.168	%
Periodic Rate ....:	0.5000	%
Daily Rate ....:	0.01644	%

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	03/22/2007	120,429.78	1		
2	Payment	04/03/2007	767.07	306	Monthly	09/03/2032

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	03/22/2007				120,429.78
1	04/03/2007	767.07	237.56	529.51	119,900.27
2	05/03/2007	767.07	599.50	167.57	119,732.70
3	06/03/2007	767.07	598.66	168.41	119,564.29
4	07/03/2007	767.07	597.82	169.25	119,395.04
5	08/03/2007	767.07	596.98	170.09	119,224.95
6	09/03/2007	767.07	596.12	170.95	119,054.00
7	10/03/2007	767.07	595.27	171.80	118,882.20
8	11/03/2007	767.07	594.41	172.66	118,709.54
9	12/03/2007	767.07	593.55	173.52	118,536.02
2007	Totals	6,903.63	5,009.87	1,893.76	
10	01/03/2008	767.07	592.68	174.39	118,361.63
11	02/03/2008	767.07	591.81	175.26	118,186.37
12	03/03/2008	767.07	590.93	176.14	118,010.23
13	04/03/2008	767.07	590.05	177.02	117,833.21
14	05/03/2008	767.07	589.17	177.90	117,655.31
15	06/03/2008	767.07	588.28	178.79	117,476.52
16	07/03/2008	767.07	587.38	179.69	117,296.83
17	08/03/2008	767.07	586.48	180.59	117,116.24
18	09/03/2008	767.07	585.58	181.49	116,934.75
19	10/03/2008	767.07	584.67	182.40	116,752.35
20	11/03/2008	767.07	583.76	183.31	116,569.04
21	12/03/2008	767.07	582.85	184.22	116,384.82
2008	Totals	9,204.84	7,053.64	2,151.20	
22	01/03/2009	767.07	581.92	185.15	116,199.67
23	02/03/2009	767.07	581.00	186.07	116,013.60
24	03/03/2009	767.07	580.07	187.00	115,826.60
25	04/03/2009	767.07	579.13	187.94	115,638.66
26	05/03/2009	767.07	578.19	188.88	115,449.78
27	06/03/2009	767.07	577.25	189.82	115,259.96
28	07/03/2009	767.07	576.30	190.77	115,069.19

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	Date	Payment	Interest	Principal	Balance
29	08/03/2009	767.07	575.35	191.72	114,877.47
30	09/03/2009	767.07	574.39	192.68	114,684.79
31	10/03/2009	767.07	573.42	193.65	114,491.14
32	11/03/2009	767.07	572.46	194.61	114,296.53
33	12/03/2009	767.07	571.48	195.59	114,100.94
2009	Totals	9,204.84	6,920.96	2,283.88	
34	01/03/2010	767.07	570.50	196.57	113,904.37
35	02/03/2010	767.07	569.52	197.55	113,706.82
36	03/03/2010	767.07	568.53	198.54	113,508.28
37	04/03/2010	767.07	567.54	199.53	113,308.75
38	05/03/2010	767.07	566.54	200.53	113,108.22
39	06/03/2010	767.07	565.54	201.53	112,906.69
40	07/03/2010	767.07	564.53	202.54	112,704.15
41	08/03/2010	767.07	563.52	203.55	112,500.60
42	09/03/2010	767.07	562.50	204.57	112,296.03
43	10/03/2010	767.07	561.48	205.59	112,090.44
44	11/03/2010	767.07	560.45	206.62	111,883.82
45	12/03/2010	767.07	559.42	207.65	111,676.17
2010	Totals	9,204.84	6,780.07	2,424.77	
46	01/03/2011	767.07	558.38	208.69	111,467.48
47	02/03/2011	767.07	557.34	209.73	111,257.75
48	03/03/2011	767.07	556.29	210.78	111,046.97
49	04/03/2011	767.07	555.23	211.84	110,835.13
50	05/03/2011	767.07	554.18	212.89	110,622.24
51	06/03/2011	767.07	553.11	213.96	110,408.28
52	07/03/2011	767.07	552.04	215.03	110,193.25
53	08/03/2011	767.07	550.97	216.10	109,977.15
54	09/03/2011	767.07	549.89	217.18	109,759.97
55	10/03/2011	767.07	548.80	218.27	109,541.70
56	11/03/2011	767.07	547.71	219.36	109,322.34
57	12/03/2011	767.07	546.61	220.46	109,101.88
2011	Totals	9,204.84	6,630.55	2,574.29	
58	01/03/2012	767.07	545.51	221.56	108,880.32
59	02/03/2012	767.07	544.40	222.67	108,657.65
60	03/03/2012	767.07	543.29	223.78	108,433.87
61	04/03/2012	767.07	542.17	224.90	108,208.97
62	05/03/2012	767.07	541.04	226.03	107,982.94
63	06/03/2012	767.07	539.91	227.16	107,755.78
64	07/03/2012	767.07	538.78	228.29	107,527.49
65	08/03/2012	767.07	537.64	229.43	107,298.06
66	09/03/2012	767.07	536.49	230.58	107,067.48
67	10/03/2012	767.07	535.34	231.73	106,835.75
68	11/03/2012	767.07	534.18	232.89	106,602.86
69	12/03/2012	767.07	533.01	234.06	106,368.80
2012	Totals	9,204.84	6,471.76	2,733.08	

	Date	Payment	Interest	Principal	Balance
70	01/03/2013	767.07	531.84	235.23	106,133.57
71	02/03/2013	767.07	530.67	236.40	105,897.17
72	03/03/2013	767.07	529.49	237.58	105,659.59
73	04/03/2013	767.07	528.30	238.77	105,420.82
74	05/03/2013	767.07	527.10	239.97	105,180.85
75	06/03/2013	767.07	525.90	241.17	104,939.68
76	07/03/2013	767.07	524.70	242.37	104,697.31
77	08/03/2013	767.07	523.49	243.58	104,453.73
78	09/03/2013	767.07	522.27	244.80	104,208.93
79	10/03/2013	767.07	521.04	246.03	103,962.90
80	11/03/2013	767.07	519.81	247.26	103,715.64
81	12/03/2013	767.07	518.58	248.49	103,467.15
2013	Totals	9,204.84	6,303.19	2,901.65	
82	01/03/2014	767.07	517.34	249.73	103,217.42
83	02/03/2014	767.07	516.09	250.98	102,966.44
84	03/03/2014	767.07	514.83	252.24	102,714.20
85	04/03/2014	767.07	513.57	253.50	102,460.70
86	05/03/2014	767.07	512.30	254.77	102,205.93
87	06/03/2014	767.07	511.03	256.04	101,949.89
88	07/03/2014	767.07	509.75	257.32	101,692.57
89	08/03/2014	767.07	508.46	258.61	101,433.96
90	09/03/2014	767.07	507.17	259.90	101,174.06
91	10/03/2014	767.07	505.87	261.20	100,912.86
92	11/03/2014	767.07	504.56	262.51	100,650.35
93	12/03/2014	767.07	503.25	263.82	100,386.53
2014	Totals	9,204.84	6,124.22	3,080.62	
94	01/03/2015	767.07	501.93	265.14	100,121.39
95	02/03/2015	767.07	500.61	266.46	99,854.93
96	03/03/2015	767.07	499.27	267.80	99,587.13
97	04/03/2015	767.07	497.94	269.13	99,318.00
98	05/03/2015	767.07	496.59	270.48	99,047.52
99	06/03/2015	767.07	495.24	271.83	98,775.69
100	07/03/2015	767.07	493.88	273.19	98,502.50
101	08/03/2015	767.07	492.51	274.56	98,227.94
102	09/03/2015	767.07	491.14	275.93	97,952.01
103	10/03/2015	767.07	489.76	277.31	97,674.70
104	11/03/2015	767.07	488.37	278.70	97,396.00
105	12/03/2015	767.07	486.98	280.09	97,115.91
2015	Totals	9,204.84	5,934.22	3,270.62	
106	01/03/2016	767.07	485.58	281.49	96,834.42
107	02/03/2016	767.07	484.17	282.90	96,551.52
108	03/03/2016	767.07	482.76	284.31	96,267.21
109	04/03/2016	767.07	481.34	285.73	95,981.48
110	05/03/2016	767.07	479.91	287.16	95,694.32
111	06/03/2016	767.07	478.47	288.60	95,405.72
112	07/03/2016	767.07	477.03	290.04	95,115.68

	Date	Payment	Interest	Principal	Balance
113	08/03/2016	767.07	475.58	291.49	94,824.19
114	09/03/2016	767.07	474.12	292.95	94,531.24
115	10/03/2016	767.07	472.66	294.41	94,236.83
116	11/03/2016	767.07	471.18	295.89	93,940.94
117	12/03/2016	767.07	469.70	297.37	93,643.57
2016	Totals	9,204.84	5,732.50	3,472.34	
118	01/03/2017	767.07	468.22	298.85	93,344.72
119	02/03/2017	767.07	466.72	300.35	93,044.37
120	03/03/2017	767.07	465.22	301.85	92,742.52
121	04/03/2017	767.07	463.71	303.36	92,439.16
122	05/03/2017	767.07	462.20	304.87	92,134.29
123	06/03/2017	767.07	460.67	306.40	91,827.89
124	07/03/2017	767.07	459.14	307.93	91,519.96
125	08/03/2017	767.07	457.60	309.47	91,210.49
126	09/03/2017	767.07	456.05	311.02	90,899.47
127	10/03/2017	767.07	454.50	312.57	90,586.90
128	11/03/2017	767.07	452.93	314.14	90,272.76
129	12/03/2017	767.07	451.36	315.71	89,957.05
2017	Totals	9,204.84	5,518.32	3,686.52	
130	01/03/2018	767.07	449.79	317.28	89,639.77
131	02/03/2018	767.07	448.20	318.87	89,320.90
132	03/03/2018	767.07	446.60	320.47	89,000.43
133	04/03/2018	767.07	445.00	322.07	88,678.36
134	05/03/2018	767.07	443.39	323.68	88,354.68
135	06/03/2018	767.07	441.77	325.30	88,029.38
136	07/03/2018	767.07	440.15	326.92	87,702.46
137	08/03/2018	767.07	438.51	328.56	87,373.90
138	09/03/2018	767.07	436.87	330.20	87,043.70
139	10/03/2018	767.07	435.22	331.85	86,711.85
140	11/03/2018	767.07	433.56	333.51	86,378.34
141	12/03/2018	767.07	431.89	335.18	86,043.16
2018	Totals	9,204.84	5,290.95	3,913.89	
142	01/03/2019	767.07	430.22	336.85	85,706.31
143	02/03/2019	767.07	428.53	338.54	85,367.77
144	03/03/2019	767.07	426.84	340.23	85,027.54
145	04/03/2019	767.07	425.14	341.93	84,685.61
146	05/03/2019	767.07	423.43	343.64	84,341.97
147	06/03/2019	767.07	421.71	345.36	83,996.61
148	07/03/2019	767.07	419.98	347.09	83,649.52
149	08/03/2019	767.07	418.25	348.82	83,300.70
150	09/03/2019	767.07	416.50	350.57	82,950.13
151	10/03/2019	767.07	414.75	352.32	82,597.81
152	11/03/2019	767.07	412.99	354.08	82,243.73
153	12/03/2019	767.07	411.22	355.85	81,887.88
2019	Totals	9,204.84	5,049.56	4,155.28	

	Date	Payment	Interest	Principal	Balance
154	01/03/2020	767.07	409.44	357.63	81,530.25
155	02/03/2020	767.07	407.65	359.42	81,170.83
156	03/03/2020	767.07	405.85	361.22	80,809.61
157	04/03/2020	767.07	404.05	363.02	80,446.59
158	05/03/2020	767.07	402.23	364.84	80,081.75
159	06/03/2020	767.07	400.41	366.66	79,715.09
160	07/03/2020	767.07	398.58	368.49	79,346.60
161	08/03/2020	767.07	396.73	370.34	78,976.26
162	09/03/2020	767.07	394.88	372.19	78,604.07
163	10/03/2020	767.07	393.02	374.05	78,230.02
164	11/03/2020	767.07	391.15	375.92	77,854.10
165	12/03/2020	767.07	389.27	377.80	77,476.30
2020	Totals	9,204.84	4,793.26	4,411.58	
166	01/03/2021	767.07	387.38	379.69	77,096.61
167	02/03/2021	767.07	385.48	381.59	76,715.02
168	03/03/2021	767.07	383.58	383.49	76,331.53
169	04/03/2021	767.07	381.66	385.41	75,946.12
170	05/03/2021	767.07	379.73	387.34	75,558.78
171	06/03/2021	767.07	377.79	389.28	75,169.50
172	07/03/2021	767.07	375.85	391.22	74,778.28
173	08/03/2021	767.07	373.89	393.18	74,385.10
174	09/03/2021	767.07	371.93	395.14	73,989.96
175	10/03/2021	767.07	369.95	397.12	73,592.84
176	11/03/2021	767.07	367.96	399.11	73,193.73
177	12/03/2021	767.07	365.97	401.10	72,792.63
2021	Totals	9,204.84	4,521.17	4,683.67	
178	01/03/2022	767.07	363.96	403.11	72,389.52
179	02/03/2022	767.07	361.95	405.12	71,984.40
180	03/03/2022	767.07	359.92	407.15	71,577.25
181	04/03/2022	767.07	357.89	409.18	71,168.07
182	05/03/2022	767.07	355.84	411.23	70,756.84
183	06/03/2022	767.07	353.78	413.29	70,343.55
184	07/03/2022	767.07	351.72	415.35	69,928.20
185	08/03/2022	767.07	349.64	417.43	69,510.77
186	09/03/2022	767.07	347.55	419.52	69,091.25
187	10/03/2022	767.07	345.46	421.61	68,669.64
188	11/03/2022	767.07	343.35	423.72	68,245.92
189	12/03/2022	767.07	341.23	425.84	67,820.08
2022	Totals	9,204.84	4,232.29	4,972.55	
190	01/03/2023	767.07	339.10	427.97	67,392.11
191	02/03/2023	767.07	336.96	430.11	66,962.00
192	03/03/2023	767.07	334.81	432.26	66,529.74
193	04/03/2023	767.07	332.65	434.42	66,095.32
194	05/03/2023	767.07	330.48	436.59	65,658.73
195	06/03/2023	767.07	328.29	438.78	65,219.95
196	07/03/2023	767.07	326.10	440.97	64,778.98

	Date	Payment	Interest	Principal	Balance
197	08/03/2023	767.07	323.89	443.18	64,335.80
198	09/03/2023	767.07	321.68	445.39	63,890.41
199	10/03/2023	767.07	319.45	447.62	63,442.79
200	11/03/2023	767.07	317.21	449.86	62,992.93
201	12/03/2023	767.07	314.96	452.11	62,540.82
2023	Totals	9,204.84	3,925.58	5,279.26	
202	01/03/2024	767.07	312.70	454.37	62,086.45
203	02/03/2024	767.07	310.43	456.64	61,629.81
204	03/03/2024	767.07	308.15	458.92	61,170.89
205	04/03/2024	767.07	305.85	461.22	60,709.67
206	05/03/2024	767.07	303.55	463.52	60,246.15
207	06/03/2024	767.07	301.23	465.84	59,780.31
208	07/03/2024	767.07	298.90	468.17	59,312.14
209	08/03/2024	767.07	296.56	470.51	58,841.63
210	09/03/2024	767.07	294.21	472.86	58,368.77
211	10/03/2024	767.07	291.84	475.23	57,893.54
212	11/03/2024	767.07	289.47	477.60	57,415.94
213	12/03/2024	767.07	287.08	479.99	56,935.95
2024	Totals	9,204.84	3,599.97	5,604.87	
214	01/03/2025	767.07	284.68	482.39	56,453.56
215	02/03/2025	767.07	282.27	484.80	55,968.76
216	03/03/2025	767.07	279.84	487.23	55,481.53
217	04/03/2025	767.07	277.41	489.66	54,991.87
218	05/03/2025	767.07	274.96	492.11	54,499.76
219	06/03/2025	767.07	272.50	494.57	54,005.19
220	07/03/2025	767.07	270.03	497.04	53,508.15
221	08/03/2025	767.07	267.54	499.53	53,008.62
222	09/03/2025	767.07	265.04	502.03	52,506.59
223	10/03/2025	767.07	262.53	504.54	52,002.05
224	11/03/2025	767.07	260.01	507.06	51,494.99
225	12/03/2025	767.07	257.47	509.60	50,985.39
2025	Totals	9,204.84	3,254.28	5,950.56	
226	01/03/2026	767.07	254.93	512.14	50,473.25
227	02/03/2026	767.07	252.37	514.70	49,958.55
228	03/03/2026	767.07	249.79	517.28	49,441.27
229	04/03/2026	767.07	247.21	519.86	48,921.41
230	05/03/2026	767.07	244.61	522.46	48,398.95
231	06/03/2026	767.07	241.99	525.08	47,873.87
232	07/03/2026	767.07	239.37	527.70	47,346.17
233	08/03/2026	767.07	236.73	530.34	46,815.83
234	09/03/2026	767.07	234.08	532.99	46,282.84
235	10/03/2026	767.07	231.41	535.66	45,747.18
236	11/03/2026	767.07	228.74	538.33	45,208.85
237	12/03/2026	767.07	226.04	541.03	44,667.82
2026	Totals	9,204.84	2,887.27	6,317.57	

	Date	Payment	Interest	Principal	Balance
238	01/03/2027	767.07	223.34	543.73	44,124.09
239	02/03/2027	767.07	220.62	546.45	43,577.64
240	03/03/2027	767.07	217.89	549.18	43,028.46
241	04/03/2027	767.07	215.14	551.93	42,476.53
242	05/03/2027	767.07	212.38	554.69	41,921.84
243	06/03/2027	767.07	209.61	557.46	41,364.38
244	07/03/2027	767.07	206.82	560.25	40,804.13
245	08/03/2027	767.07	204.02	563.05	40,241.08
246	09/03/2027	767.07	201.21	565.86	39,675.22
247	10/03/2027	767.07	198.38	568.69	39,106.53
248	11/03/2027	767.07	195.53	571.54	38,534.99
249	12/03/2027	767.07	192.67	574.40	37,960.59
2027	Totals	9,204.84	2,497.61	6,707.23	
250	01/03/2028	767.07	189.80	577.27	37,383.32
251	02/03/2028	767.07	186.92	580.15	36,803.17
252	03/03/2028	767.07	184.02	583.05	36,220.12
253	04/03/2028	767.07	181.10	585.97	35,634.15
254	05/03/2028	767.07	178.17	588.90	35,045.25
255	06/03/2028	767.07	175.23	591.84	34,453.41
256	07/03/2028	767.07	172.27	594.80	33,858.61
257	08/03/2028	767.07	169.29	597.78	33,260.83
258	09/03/2028	767.07	166.30	600.77	32,660.06
259	10/03/2028	767.07	163.30	603.77	32,056.29
260	11/03/2028	767.07	160.28	606.79	31,449.50
261	12/03/2028	767.07	157.25	609.82	30,839.68
2028	Totals	9,204.84	2,083.93	7,120.91	
262	01/03/2029	767.07	154.20	612.87	30,226.81
263	02/03/2029	767.07	151.13	615.94	29,610.87
264	03/03/2029	767.07	148.05	619.02	28,991.85
265	04/03/2029	767.07	144.96	622.11	28,369.74
266	05/03/2029	767.07	141.85	625.22	27,744.52
267	06/03/2029	767.07	138.72	628.35	27,116.17
268	07/03/2029	767.07	135.58	631.49	26,484.68
269	08/03/2029	767.07	132.42	634.65	25,850.03
270	09/03/2029	767.07	129.25	637.82	25,212.21
271	10/03/2029	767.07	126.06	641.01	24,571.20
272	11/03/2029	767.07	122.86	644.21	23,926.99
273	12/03/2029	767.07	119.63	647.44	23,279.55
2029	Totals	9,204.84	1,644.71	7,560.13	
274	01/03/2030	767.07	116.40	650.67	22,628.88
275	02/03/2030	767.07	113.14	653.93	21,974.95
276	03/03/2030	767.07	109.87	657.20	21,317.75
277	04/03/2030	767.07	106.59	660.48	20,657.27
278	05/03/2030	767.07	103.29	663.78	19,993.49
279	06/03/2030	767.07	99.97	667.10	19,326.39
280	07/03/2030	767.07	96.63	670.44	18,655.95

	Date	Payment	Interest	Principal	Balance
281	08/03/2030	767.07	93.28	673.79	17,982.16
282	09/03/2030	767.07	89.91	677.16	17,305.00
283	10/03/2030	767.07	86.53	680.54	16,624.46
284	11/03/2030	767.07	83.12	683.95	15,940.51
285	12/03/2030	767.07	79.70	687.37	15,253.14
2030	Totals	9,204.84	1,178.43	8,026.41	
286	01/03/2031	767.07	76.27	690.80	14,562.34
287	02/03/2031	767.07	72.81	694.26	13,868.08
288	03/03/2031	767.07	69.34	697.73	13,170.35
289	04/03/2031	767.07	65.85	701.22	12,469.13
290	05/03/2031	767.07	62.35	704.72	11,764.41
291	06/03/2031	767.07	58.82	708.25	11,056.16
292	07/03/2031	767.07	55.28	711.79	10,344.37
293	08/03/2031	767.07	51.72	715.35	9,629.02
294	09/03/2031	767.07	48.15	718.92	8,910.10
295	10/03/2031	767.07	44.55	722.52	8,187.58
296	11/03/2031	767.07	40.94	726.13	7,461.45
297	12/03/2031	767.07	37.31	729.76	6,731.69
2031	Totals	9,204.84	683.39	8,521.45	
298	01/03/2032	767.07	33.66	733.41	5,998.28
299	02/03/2032	767.07	29.99	737.08	5,261.20
300	03/03/2032	767.07	26.31	740.76	4,520.44
301	04/03/2032	767.07	22.60	744.47	3,775.97
302	05/03/2032	767.07	18.88	748.19	3,027.78
303	06/03/2032	767.07	15.14	751.93	2,275.85
304	07/03/2032	767.07	11.38	755.69	1,520.16
305	08/03/2032	767.07	7.60	759.47	760.69
306	09/03/2032	767.07	6.38	760.69	0.00
2032	Totals	6,903.63	171.94	6,731.69	
Grand Totals		234,723.42	114,293.64	120,429.78	

Last interest amount increased by 2.58 due to rounding.

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Compound Period .....: Monthly

Nominal Annual Rate .: 6.000 %
Effective Annual Rate : 6.168 %
Periodic Rate ....: 0.5000 %
Daily Rate ....: 0.01644 %

CASH FLOW DATA

	Event	Start Date	Amount	Number	Period	End Date
1	Loan	01/22/2007	14,789.03	1		
2	Payment	02/22/2007	285.91	60	Monthly	01/22/2012

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	01/22/2007				14,789.03
1	02/22/2007	285.91	73.95	211.96	14,577.07
2	03/22/2007	285.91	72.89	213.02	14,364.05
3	04/22/2007	285.91	71.82	214.09	14,149.96
4	05/22/2007	285.91	70.75	215.16	13,934.80
5	06/22/2007	285.91	69.67	216.24	13,718.56
6	07/22/2007	285.91	68.59	217.32	13,501.24
7	08/22/2007	285.91	67.51	218.40	13,282.84
8	09/22/2007	285.91	66.41	219.50	13,063.34
9	10/22/2007	285.91	65.32	220.59	12,842.75
10	11/22/2007	285.91	64.21	221.70	12,621.05
11	12/22/2007	285.91	63.11	222.80	12,398.25
2007	Totals	3,145.01	754.23	2,390.78	
12	01/22/2008	285.91	61.99	223.92	12,174.33
13	02/22/2008	285.91	60.87	225.04	11,949.29
14	03/22/2008	285.91	59.75	226.16	11,723.13
15	04/22/2008	285.91	58.62	227.29	11,495.84
16	05/22/2008	285.91	57.48	228.43	11,267.41
17	06/22/2008	285.91	56.34	229.57	11,037.84
18	07/22/2008	285.91	55.19	230.72	10,807.12
19	08/22/2008	285.91	54.04	231.87	10,575.25
20	09/22/2008	285.91	52.88	233.03	10,342.22
21	10/22/2008	285.91	51.71	234.20	10,108.02
22	11/22/2008	285.91	50.54	235.37	9,872.65
23	12/22/2008	285.91	49.36	236.55	9,636.10
2008	Totals	3,430.92	668.77	2,762.15	
24	01/22/2009	285.91	48.18	237.73	9,398.37
25	02/22/2009	285.91	46.99	238.92	9,159.45
26	03/22/2009	285.91	45.80	240.11	8,919.34
27	04/22/2009	285.91	44.60	241.31	8,678.03
28	05/22/2009	285.91	43.39	242.52	8,435.51

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	Date	Payment	Interest	Principal	Balance
29	06/22/2009	285.91	42.18	243.73	8,191.78
30	07/22/2009	285.91	40.96	244.95	7,946.83
31	08/22/2009	285.91	39.73	246.18	7,700.65
32	09/22/2009	285.91	38.50	247.41	7,453.24
33	10/22/2009	285.91	37.27	248.64	7,204.60
34	11/22/2009	285.91	36.02	249.89	6,954.71
35	12/22/2009	285.91	34.77	251.14	6,703.57
2009	Totals	3,430.92	498.39	2,932.53	
36	01/22/2010	285.91	33.52	252.39	6,451.18
37	02/22/2010	285.91	32.26	253.65	6,197.53
38	03/22/2010	285.91	30.99	254.92	5,942.61
39	04/22/2010	285.91	29.71	256.20	5,686.41
40	05/22/2010	285.91	28.43	257.48	5,428.93
41	06/22/2010	285.91	27.14	258.77	5,170.16
42	07/22/2010	285.91	25.85	260.06	4,910.10
43	08/22/2010	285.91	24.55	261.36	4,648.74
44	09/22/2010	285.91	23.24	262.67	4,386.07
45	10/22/2010	285.91	21.93	263.98	4,122.09
46	11/22/2010	285.91	20.61	265.30	3,856.79
47	12/22/2010	285.91	19.28	266.63	3,590.16
2010	Totals	3,430.92	317.51	3,113.41	
48	01/22/2011	285.91	17.95	267.96	3,322.20
49	02/22/2011	285.91	16.61	269.30	3,052.90
50	03/22/2011	285.91	15.26	270.65	2,782.25
51	04/22/2011	285.91	13.91	272.00	2,510.25
52	05/22/2011	285.91	12.55	273.36	2,236.89
53	06/22/2011	285.91	11.18	274.73	1,962.16
54	07/22/2011	285.91	9.81	276.10	1,686.06
55	08/22/2011	285.91	8.43	277.48	1,408.58
56	09/22/2011	285.91	7.04	278.87	1,129.71
57	10/22/2011	285.91	5.65	280.26	849.45
58	11/22/2011	285.91	4.25	281.66	567.79
59	12/22/2011	285.91	2.84	283.07	284.72
2011	Totals	3,430.92	125.48	3,305.44	
60	01/22/2012	285.91	1.19	284.72	0.00
2012	Totals	285.91	1.19	284.72	
Grand Totals		17,154.60	2,365.57	14,789.03	

Last interest amount decreased by 0.23 due to rounding.

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Rate Period .... : Monthly

Nominal Annual Rate .... : 6.000 %

CASH FLOW DATA

	Event	Date	Amount	Number	Period	End Date
1	Loan	01/22/2007	135,218.81	1		
2	Payment	02/22/2007	810.71	360	Monthly	01/22/2037

AMORTIZATION SCHEDULE - U.S. Rule (no compounding), 360 Day Year

	Date	Payment	Interest	Principal	Balance
Loan	01/22/2007				135,218.81
1	02/22/2007	810.71	676.09	134.62	135,084.19
2	03/22/2007	810.71	675.42	135.29	134,948.90
3	04/22/2007	810.71	674.74	135.97	134,812.93
4	05/22/2007	810.71	674.06	136.65	134,676.28
5	06/22/2007	810.71	673.38	137.33	134,538.95
6	07/22/2007	810.71	672.69	138.02	134,400.93
7	08/22/2007	810.71	672.00	138.71	134,262.22
8	09/22/2007	810.71	671.31	139.40	134,122.82
9	10/22/2007	810.71	670.61	140.10	133,982.72
10	11/22/2007	810.71	669.91	140.80	133,841.92
11	12/22/2007	810.71	669.21	141.50	133,700.42
2007 Totals		8,917.81	7,399.42	1,518.39	
12	01/22/2008	810.71	668.50	142.21	133,558.21
13	02/22/2008	810.71	667.79	142.92	133,415.29
14	03/22/2008	810.71	667.08	143.63	133,271.66
15	04/22/2008	810.71	666.36	144.35	133,127.31
16	05/22/2008	810.71	665.64	145.07	132,982.24
17	06/22/2008	810.71	664.91	145.80	132,836.44
18	07/22/2008	810.71	664.18	146.53	132,689.91
19	08/22/2008	810.71	663.45	147.26	132,542.65
20	09/22/2008	810.71	662.71	148.00	132,394.65
21	10/22/2008	810.71	661.97	148.74	132,245.91
22	11/22/2008	810.71	661.23	149.48	132,096.43
23	12/22/2008	810.71	660.48	150.23	131,946.20
2008 Totals		9,728.52	7,974.30	1,754.22	
24	01/22/2009	810.71	659.73	150.98	131,795.22
25	02/22/2009	810.71	658.98	151.73	131,643.49
26	03/22/2009	810.71	658.22	152.49	131,491.00
27	04/22/2009	810.71	657.46	153.25	131,337.75
28	05/22/2009	810.71	656.69	154.02	131,183.73
29	06/22/2009	810.71	655.92	154.79	131,028.94
30	07/22/2009	810.71	655.14	155.57	130,873.37
31	08/22/2009	810.71	654.37	156.34	130,717.03
32	09/22/2009	810.71	653.59	157.12	130,559.91
33	10/22/2009	810.71	652.80	157.91	130,402.00

Date		Payment	Interest	Principal	Balance
34	11/22/2009	810.71	652.01	158.70	130,243.30
35	12/22/2009	810.71	651.22	159.49	130,083.81
2009 Totals		9.728.52	7,866.13	1,862.39	
36	01/22/2010	810.71	650.42	160.29	129.923.52
37	02/22/2010	810.71	649.62	161.09	129,762.43
38	03/22/2010	810.71	648.81	161.90	129,600.53
39	04/22/2010	810.71	648.00	162.71	129,437.82
40	05/22/2010	810.71	647.19	163.52	129,274.30
41	06/22/2010	810.71	646.37	164.34	129,109.96
42	07/22/2010	810.71	645.55	165.16	128,944.80
43	08/22/2010	810.71	644.72	165.99	128,778.81
44	09/22/2010	810.71	643.89	166.82	128,611.99
45	10/22/2010	810.71	643.06	167.65	128,444.34
46	11/22/2010	810.71	642.22	168.49	128,275.85
47	12/22/2010	810.71	641.38	169.33	128,106.52
2010 Totals		9.728.52	7,751.23	1,977.29	
48	01/22/2011	810.71	640.53	170.18	127.936.34
49	02/22/2011	810.71	639.68	171.03	127,765.31
50	03/22/2011	810.71	638.83	171.88	127.593.43
51	04/22/2011	810.71	637.97	172.74	127,420.69
52	05/22/2011	810.71	637.10	173.61	127.247.08
53	06/22/2011	810.71	636.24	174.47	127.072.61
54	07/22/2011	810.71	635.36	175.35	126.897.26
55	08/22/2011	810.71	634.49	176.22	126.721.04
56	09/22/2011	810.71	633.61	177.10	126.543.94
57	10/22/2011	810.71	632.72	177.99	126,365.95
58	11/22/2011	810.71	631.83	178.88	126,187.07
59	12/22/2011	810.71	630.94	179.77	126,007.30
2011 Totals		9.728.52	7,629.30	2,099.22	
60	01/22/2012	810.71	630.04	180.67	125,826.63
61	02/22/2012	810.71	629.13	181.58	125,645.05
62	03/22/2012	810.71	628.23	182.48	125.462.57
63	04/22/2012	810.71	627.31	183.40	125.279.17
64	05/22/2012	810.71	626.40	184.31	125,094.86
65	06/22/2012	810.71	625.47	185.24	124,909.62
66	07/22/2012	810.71	624.55	186.16	124.723.46
67	08/22/2012	810.71	623.62	187.09	124,536.37
68	09/22/2012	810.71	622.68	188.03	124,348.34
69	10/22/2012	810.71	621.74	188.97	124,159.37
70	11/22/2012	810.71	620.80	189.91	123,969.46
71	12/22/2012	810.71	619.85	190.86	123,778.60
2012 Totals		9,728.52	7,499.82	2,228.70	
72	01/22/2013	810.71	618.89	191.82	123.586.78
73	02/22/2013	810.71	617.93	192.78	123,394.00
74	03/22/2013	810.71	616.97	193.74	123.200.26
75	04/22/2013	810.71	616.00	194.71	123,005.55
76	05/22/2013	810.71	615.03	195.68	122.809.87

Date	Payment	Interest	Principal	Balance
77 06/22/2013	810.71	614.05	196.66	122,613.21
78 07/22/2013	810.71	613.07	197.64	122,415.57
79 08/22/2013	810.71	612.08	198.63	122,216.94
80 09/22/2013	810.71	611.08	199.63	122,017.31
81 10/22/2013	810.71	610.09	200.62	121,816.69
82 11/22/2013	810.71	609.08	201.63	121,615.06
83 12/22/2013	810.71	608.08	202.63	121,412.43
2013 Totals	9,728.52	7,362.35	2,366.17	
84 01/22/2014	810.71	607.06	203.65	121,208.78
85 02/22/2014	810.71	606.04	204.67	121,004.11
86 03/22/2014	810.71	605.02	205.69	120,798.42
87 04/22/2014	810.71	603.99	206.72	120,591.70
88 05/22/2014	810.71	602.96	207.75	120,383.95
89 06/22/2014	810.71	601.92	208.79	120,175.16
90 07/22/2014	810.71	600.88	209.83	119,965.33
91 08/22/2014	810.71	599.83	210.88	119,754.45
92 09/22/2014	810.71	598.77	211.94	119,542.51
93 10/22/2014	810.71	597.71	213.00	119,329.51
94 11/22/2014	810.71	596.65	214.06	119,115.45
95 12/22/2014	810.71	595.58	215.13	118,900.32
2014 Totals	9,728.52	7,216.41	2,512.11	
96 01/22/2015	810.71	594.50	216.21	118,684.11
97 02/22/2015	810.71	593.42	217.29	118,466.82
98 03/22/2015	810.71	592.33	218.38	118,248.44
99 04/22/2015	810.71	591.24	219.47	118,028.97
100 05/22/2015	810.71	590.14	220.57	117,808.40
101 06/22/2015	810.71	589.04	221.67	117,586.73
102 07/22/2015	810.71	587.93	222.78	117,363.95
103 08/22/2015	810.71	586.82	223.89	117,140.06
104 09/22/2015	810.71	585.70	225.01	116,915.05
105 10/22/2015	810.71	584.58	226.13	116,688.92
106 11/22/2015	810.71	583.44	227.27	116,461.65
107 12/22/2015	810.71	582.31	228.40	116,233.25
2015 Totals	9,728.52	7,061.45	2,667.07	
108 01/22/2016	810.71	581.17	229.54	116,003.71
109 02/22/2016	810.71	580.02	230.69	115,773.02
110 03/22/2016	810.71	578.87	231.84	115,541.18
111 04/22/2016	810.71	577.71	233.00	115,308.18
112 05/22/2016	810.71	576.54	234.17	115,074.01
113 06/22/2016	810.71	575.37	235.34	114,838.67
114 07/22/2016	810.71	574.19	236.52	114,602.15
115 08/22/2016	810.71	573.01	237.70	114,364.45
116 09/22/2016	810.71	571.82	238.89	114,125.56
117 10/22/2016	810.71	570.63	240.08	113,885.48
118 11/22/2016	810.71	569.43	241.28	113,644.20
119 12/22/2016	810.71	568.22	242.49	113,401.71
2016 Totals	9,728.52	6,896.98	2,831.54	

	Date	Payment	Interest	Principal	Balance
120	01/22/2017	810.71	567.01	243.70	113,158.01
121	02/22/2017	810.71	565.79	244.92	112,913.09
122	03/22/2017	810.71	564.57	246.14	112,666.95
123	04/22/2017	810.71	563.33	247.38	112,419.57
124	05/22/2017	810.71	562.10	248.61	112,170.96
125	06/22/2017	810.71	560.85	249.86	111,921.10
126	07/22/2017	810.71	559.61	251.10	111,670.00
127	08/22/2017	810.71	558.35	252.36	111,417.64
128	09/22/2017	810.71	557.09	253.62	111,164.02
129	10/22/2017	810.71	555.82	254.89	110,909.13
130	11/22/2017	810.71	554.55	256.16	110,652.97
131	12/22/2017	810.71	553.26	257.45	110,395.52
2017 Totals		9,728.52	6,722.33	3,006.19	
132	01/22/2018	810.71	551.98	258.73	110,136.79
133	02/22/2018	810.71	550.68	260.03	109,876.76
134	03/22/2018	810.71	549.38	261.33	109,615.43
135	04/22/2018	810.71	548.08	262.63	109,352.80
136	05/22/2018	810.71	546.76	263.95	109,088.85
137	06/22/2018	810.71	545.44	265.27	108,823.58
138	07/22/2018	810.71	544.12	266.59	108,556.99
139	08/22/2018	810.71	542.78	267.93	108,289.06
140	09/22/2018	810.71	541.45	269.26	108,019.80
141	10/22/2018	810.71	540.10	270.61	107,749.19
142	11/22/2018	810.71	538.75	271.96	107,477.23
143	12/22/2018	810.71	537.39	273.32	107,203.91
2018 Totals		9,728.52	6,536.91	3,191.61	
144	01/22/2019	810.71	536.02	274.69	106,929.22
145	02/22/2019	810.71	534.65	276.06	106,653.16
146	03/22/2019	810.71	533.27	277.44	106,375.72
147	04/22/2019	810.71	531.88	278.83	106,096.89
148	05/22/2019	810.71	530.48	280.23	105,816.66
149	06/22/2019	810.71	529.08	281.63	105,535.03
150	07/22/2019	810.71	527.68	283.03	105,252.00
151	08/22/2019	810.71	526.26	284.45	104,967.55
152	09/22/2019	810.71	524.84	285.87	104,681.68
153	10/22/2019	810.71	523.41	287.30	104,394.38
154	11/22/2019	810.71	521.97	288.74	104,105.64
155	12/22/2019	810.71	520.53	290.18	103,815.46
2019 Totals		9,728.52	6,340.07	3,388.45	
156	01/22/2020	810.71	519.08	291.63	103,523.83
157	02/22/2020	810.71	517.62	293.09	103,230.74
158	03/22/2020	810.71	516.15	294.56	102,936.18
159	04/22/2020	810.71	514.68	296.03	102,640.15
160	05/22/2020	810.71	513.20	297.51	102,342.64
161	06/22/2020	810.71	511.71	299.00	102,043.64
162	07/22/2020	810.71	510.22	300.49	101,743.15
163	08/22/2020	810.71	508.72	301.99	101,441.16
164	09/22/2020	810.71	507.21	303.50	101,137.66

Date		Payment	Interest	Principal	Balance
165	10/22/2020	810.71	505.69	305.02	100,832.64
166	11/22/2020	810.71	504.16	306.55	100,526.09
167	12/22/2020	810.71	502.63	308.08	100,218.01
2020 Totals		9,728.52	6,131.07	3,597.45	
168	01/22/2021	810.71	501.09	309.62	99,908.39
169	02/22/2021	810.71	499.54	311.17	99,597.22
170	03/22/2021	810.71	497.99	312.72	99,284.50
171	04/22/2021	810.71	496.42	314.29	98,970.21
172	05/22/2021	810.71	494.85	315.86	98,654.35
173	06/22/2021	810.71	493.27	317.44	98,336.91
174	07/22/2021	810.71	491.68	319.03	98,017.88
175	08/22/2021	810.71	490.09	320.62	97,697.26
176	09/22/2021	810.71	488.49	322.22	97,375.04
177	10/22/2021	810.71	486.88	323.83	97,051.21
178	11/22/2021	810.71	485.26	325.45	96,725.76
179	12/22/2021	810.71	483.63	327.08	96,398.68
2021 Totals		9,728.52	5,909.19	3,819.33	
180	01/22/2022	810.71	481.99	328.72	96,069.96
181	02/22/2022	810.71	480.35	330.36	95,739.60
182	03/22/2022	810.71	478.70	332.01	95,407.59
183	04/22/2022	810.71	477.04	333.67	95,073.92
184	05/22/2022	810.71	475.37	335.34	94,738.58
185	06/22/2022	810.71	473.69	337.02	94,401.56
186	07/22/2022	810.71	472.01	338.70	94,062.86
187	08/22/2022	810.71	470.31	340.40	93,722.46
188	09/22/2022	810.71	468.61	342.10	93,380.36
189	10/22/2022	810.71	466.90	343.81	93,036.55
190	11/22/2022	810.71	465.18	345.53	92,691.02
191	12/22/2022	810.71	463.46	347.25	92,343.77
2022 Totals		9,728.52	5,673.61	4,054.91	
192	01/22/2023	810.71	461.72	348.99	91,994.78
193	02/22/2023	810.71	459.97	350.74	91,644.04
194	03/22/2023	810.71	458.22	352.49	91,291.55
195	04/22/2023	810.71	456.46	354.25	90,937.30
196	05/22/2023	810.71	454.69	356.02	90,581.28
197	06/22/2023	810.71	452.91	357.80	90,223.48
198	07/22/2023	810.71	451.12	359.59	89,863.89
199	08/22/2023	810.71	449.32	361.39	89,502.50
200	09/22/2023	810.71	447.51	363.20	89,139.30
201	10/22/2023	810.71	445.70	365.01	88,774.29
202	11/22/2023	810.71	443.87	366.84	88,407.45
203	12/22/2023	810.71	442.04	368.67	88,038.78
2023 Totals		9,728.52	5,423.53	4,304.99	
204	01/22/2024	810.71	440.19	370.52	87,668.26
205	02/22/2024	810.71	438.34	372.37	87,295.89
206	03/22/2024	810.71	436.48	374.23	86,921.66
207	04/22/2024	810.71	434.61	376.10	86,545.56

	Date	Payment	Interest	Principal	Balance
208	05/22/2024	810.71	432.73	377.98	86,167.58
209	06/22/2024	810.71	430.84	379.87	85,787.71
210	07/22/2024	810.71	428.94	381.77	85,405.94
211	08/22/2024	810.71	427.03	383.68	85,022.26
212	09/22/2024	810.71	425.11	385.60	84,636.66
213	10/22/2024	810.71	423.18	387.53	84,249.13
214	11/22/2024	810.71	421.25	389.46	83,859.67
215	12/22/2024	810.71	419.30	391.41	83,468.26
2024 Totals		9,728.52	5,158.00	4,570.52	
216	01/22/2025	810.71	417.34	393.37	83,074.89
217	02/22/2025	810.71	415.37	395.34	82,679.55
218	03/22/2025	810.71	413.40	397.31	82,282.24
219	04/22/2025	810.71	411.41	399.30	81,882.94
220	05/22/2025	810.71	409.41	401.30	81,481.64
221	06/22/2025	810.71	407.41	403.30	81,078.34
222	07/22/2025	810.71	405.39	405.32	80,673.02
223	08/22/2025	810.71	403.37	407.34	80,265.68
224	09/22/2025	810.71	401.33	409.38	79,856.30
225	10/22/2025	810.71	399.28	411.43	79,444.87
226	11/22/2025	810.71	397.22	413.49	79,031.38
227	12/22/2025	810.71	395.16	415.55	78,615.83
2025 Totals		9,728.52	4,876.09	4,852.43	
228	01/22/2026	810.71	393.08	417.63	78,198.20
229	02/22/2026	810.71	390.99	419.72	77,778.48
230	03/22/2026	810.71	388.89	421.82	77,356.66
231	04/22/2026	810.71	386.78	423.93	76,932.73
232	05/22/2026	810.71	384.66	426.05	76,506.68
233	06/22/2026	810.71	382.53	428.18	76,078.50
234	07/22/2026	810.71	380.39	430.32	75,648.18
235	08/22/2026	810.71	378.24	432.47	75,215.71
236	09/22/2026	810.71	376.08	434.63	74,781.08
237	10/22/2026	810.71	373.91	436.80	74,344.28
238	11/22/2026	810.71	371.72	438.99	73,905.29
239	12/22/2026	810.71	369.53	441.18	73,464.11
2026 Totals		9,728.52	4,576.80	5,151.72	
240	01/22/2027	810.71	367.32	443.39	73,020.72
241	02/22/2027	810.71	365.10	445.61	72,575.11
242	03/22/2027	810.71	362.88	447.83	72,127.28
243	04/22/2027	810.71	360.64	450.07	71,677.21
244	05/22/2027	810.71	358.39	452.32	71,224.89
245	06/22/2027	810.71	356.12	454.59	70,770.30
246	07/22/2027	810.71	353.85	456.86	70,313.44
247	08/22/2027	810.71	351.57	459.14	69,854.30
248	09/22/2027	810.71	349.27	461.44	69,392.86
249	10/22/2027	810.71	346.96	463.75	68,929.11
250	11/22/2027	810.71	344.65	466.06	68,463.05
251	12/22/2027	810.71	342.32	468.39	67,994.66
2027 Totals		9,728.52	4,259.07	5,469.45	

	Date	Payment	Interest	Principal	Balance
252	01/22/2028	810.71	339.97	470.74	67,523.92
253	02/22/2028	810.71	337.62	473.09	67,050.83
254	03/22/2028	810.71	335.25	475.46	66,575.37
255	04/22/2028	810.71	332.88	477.83	66,097.54
256	05/22/2028	810.71	330.49	480.22	65,617.32
257	06/22/2028	810.71	328.09	482.62	65,134.70
258	07/22/2028	810.71	325.67	485.04	64,649.66
259	08/22/2028	810.71	323.25	487.46	64,162.20
260	09/22/2028	810.71	320.81	489.90	63,672.30
261	10/22/2028	810.71	318.36	492.35	63,179.95
262	11/22/2028	810.71	315.90	494.81	62,685.14
263	12/22/2028	810.71	313.43	497.28	62,187.86
2028 Totals		9,728.52	3,921.72	5,806.80	
264	01/22/2029	810.71	310.94	499.77	61,688.09
265	02/22/2029	810.71	308.44	502.27	61,185.82
266	03/22/2029	810.71	305.93	504.78	60,681.04
267	04/22/2029	810.71	303.41	507.30	60,173.74
268	05/22/2029	810.71	300.87	509.84	59,663.90
269	06/22/2029	810.71	298.32	512.39	59,151.51
270	07/22/2029	810.71	295.76	514.95	58,636.56
271	08/22/2029	810.71	293.18	517.53	58,119.03
272	09/22/2029	810.71	290.60	520.11	57,598.92
273	10/22/2029	810.71	287.99	522.72	57,076.20
274	11/22/2029	810.71	285.38	525.33	56,550.87
275	12/22/2029	810.71	282.75	527.96	56,022.91
2029 Totals		9,728.52	3,563.57	6,164.95	
276	01/22/2030	810.71	280.11	530.60	55,492.31
277	02/22/2030	810.71	277.46	533.25	54,959.06
278	03/22/2030	810.71	274.80	535.91	54,423.15
279	04/22/2030	810.71	272.12	538.59	53,884.56
280	05/22/2030	810.71	269.42	541.29	53,343.27
281	06/22/2030	810.71	266.72	543.99	52,799.28
282	07/22/2030	810.71	264.00	546.71	52,252.57
283	08/22/2030	810.71	261.26	549.45	51,703.12
284	09/22/2030	810.71	258.52	552.19	51,150.93
285	10/22/2030	810.71	255.75	554.96	50,595.97
286	11/22/2030	810.71	252.98	557.73	50,038.24
287	12/22/2030	810.71	250.19	560.52	49,477.72
2030 Totals		9,728.52	3,183.33	6,545.19	
288	01/22/2031	810.71	247.39	563.32	48,914.40
289	02/22/2031	810.71	244.57	566.14	48,348.26
290	03/22/2031	810.71	241.74	568.97	47,779.29
291	04/22/2031	810.71	238.90	571.81	47,207.48
292	05/22/2031	810.71	236.04	574.67	46,632.81
293	06/22/2031	810.71	233.16	577.55	46,055.26
294	07/22/2031	810.71	230.28	580.43	45,474.83
295	08/22/2031	810.71	227.37	583.34	44,891.49
296	09/22/2031	810.71	224.46	586.25	44,305.24

	Date	Payment	Interest	Principal	Balance
297	10/22/2031	810.71	221.53	589.18	43,716.06
298	11/22/2031	810.71	218.58	592.13	43,123.93
299	12/22/2031	810.71	215.62	595.09	42,528.84
2031 Totals		9,728.52	2,779.64	6,948.88	
300	01/22/2032	810.71	212.64	598.07	41,930.77
301	02/22/2032	810.71	209.65	601.06	41,329.71
302	03/22/2032	810.71	206.65	604.06	40,725.65
303	04/22/2032	810.71	203.63	607.08	40,118.57
304	05/22/2032	810.71	200.59	610.12	39,508.45
305	06/22/2032	810.71	197.54	613.17	38,895.28
306	07/22/2032	810.71	194.48	616.23	38,279.05
307	08/22/2032	810.71	191.40	619.31	37,659.74
308	09/22/2032	810.71	188.30	622.41	37,037.33
309	10/22/2032	810.71	185.19	625.52	36,411.81
310	11/22/2032	810.71	182.06	628.65	35,783.16
311	12/22/2032	810.71	178.92	631.79	35,151.37
2032 Totals		9,728.52	2,351.05	7,377.47	
312	01/22/2033	810.71	175.76	634.95	34,516.42
313	02/22/2033	810.71	172.58	638.13	33,878.29
314	03/22/2033	810.71	169.39	641.32	33,236.97
315	04/22/2033	810.71	166.18	644.53	32,592.44
316	05/22/2033	810.71	162.96	647.75	31,944.69
317	06/22/2033	810.71	159.72	650.99	31,293.70
318	07/22/2033	810.71	156.47	654.24	30,639.46
319	08/22/2033	810.71	153.20	657.51	29,981.95
320	09/22/2033	810.71	149.91	660.80	29,321.15
321	10/22/2033	810.71	146.61	664.10	28,657.05
322	11/22/2033	810.71	143.29	667.42	27,989.63
323	12/22/2033	810.71	139.95	670.76	27,318.87
2033 Totals		9,728.52	1,896.02	7,832.50	
324	01/22/2034	810.71	136.59	674.12	26,644.75
325	02/22/2034	810.71	133.22	677.49	25,967.26
326	03/22/2034	810.71	129.84	680.87	25,286.39
327	04/22/2034	810.71	126.43	684.28	24,602.11
328	05/22/2034	810.71	123.01	687.70	23,914.41
329	06/22/2034	810.71	119.57	691.14	23,223.27
330	07/22/2034	810.71	116.12	694.59	22,528.68
331	08/22/2034	810.71	112.64	698.07	21,830.61
332	09/22/2034	810.71	109.15	701.56	21,129.05
333	10/22/2034	810.71	105.65	705.06	20,423.99
334	11/22/2034	810.71	102.12	708.59	19,715.40
335	12/22/2034	810.71	98.58	712.13	19,003.27
2034 Totals		9,728.52	1,412.92	8,315.60	
336	01/22/2035	810.71	95.02	715.69	18,287.58
337	02/22/2035	810.71	91.44	719.27	17,568.31
338	03/22/2035	810.71	87.84	722.87	16,845.44
339	04/22/2035	810.71	84.23	726.48	16,118.96

	Date	Payment	Interest	Principal	Balance
340	05/22/2035	810.71	80.59	730.12	15,388.84
341	06/22/2035	810.71	76.94	733.77	14,655.07
342	07/22/2035	810.71	73.28	737.43	13,917.64
343	08/22/2035	810.71	69.59	741.12	13,176.52
344	09/22/2035	810.71	65.88	744.83	12,431.69
345	10/22/2035	810.71	62.16	748.55	11,683.14
346	11/22/2035	810.71	58.42	752.29	10,930.85
347	12/22/2035	810.71	54.65	756.06	10,174.79
2035 Totals		9,728.52	900.04	8,828.48	
348	01/22/2036	810.71	50.87	759.84	9,414.95
349	02/22/2036	810.71	47.07	763.64	8,651.31
350	03/22/2036	810.71	43.26	767.45	7,883.86
351	04/22/2036	810.71	39.42	771.29	7,112.57
352	05/22/2036	810.71	35.56	775.15	6,337.42
353	06/22/2036	810.71	31.69	779.02	5,558.40
354	07/22/2036	810.71	27.79	782.92	4,775.48
355	08/22/2036	810.71	23.88	786.83	3,988.65
356	09/22/2036	810.71	19.94	790.77	3,197.88
357	10/22/2036	810.71	15.99	794.72	2,403.16
358	11/22/2036	810.71	12.02	798.69	1,604.47
359	12/22/2036	810.71	8.02	802.69	801.78
2036 Totals		9,728.52	355.51	9,373.01	
360	01/22/2037	810.71	8.93	801.78	0.00
2037 Totals		810.71	8.93	801.78	
Grand Totals		291,855.60	156,636.79	135,218.81	

Last interest amount increased by 4.92 due to rounding.

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
6.000 %	$ 156,636.79	$ 135,218.81	$ 291,855.60

PREPARED STATEMENT OF DAVID C. JONES, PRESIDENT, ASSOCIATION OF INDEPENDENT CONSUMER CREDIT COUNSELING AGENCIES

SUBMISSION OF DAVID C. JONES
PRESIDENT, ASSOCIATION OF INDEPENDENT CONSUMER CREDIT COUNSELING AGENCIES
To The
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON ADMINISTRATIVE AND COMMERCIAL LAW
Hearing On The
Second Anniversary of the Enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Are Consumers Really Being Protected Under the Act?
May 1, 2007

Chairwoman Sanchez and members of the Subcommittee, the Association of Independent Consumer Credit Counseling Agencies (AICCCA) appreciates the opportunity to address the current issues and future viability of the pre-bankruptcy credit counseling and pre-discharge financial education provisions of BAPCPA. AICCCA members currently provide counseling and education to millions of U.S. consumers and serve over 750,000 clients repaying their debts through legitimate Debt Management Plans. Together, these agencies annually return over $3.2 billion in consumer payments to the nation's creditors while providing consumers with a financial restructuring option outside of the bankruptcy system. In addition, we have counseled over 200,000 consumers entering the bankruptcy system since October of 2005.

AICCCA is pleased to provide input to the Subcommittee as it considers the effectiveness and future viability of pre-bankruptcy credit counseling and pre-discharge education. These provisions seek to assure that debtors are fully informed of all their viable options for addressing financial distress before they file for bankruptcy, and that they emerge from the bankruptcy process with the basic education and budgeting tools that can minimize any future need for another bankruptcy filing. While we have some concerns about the process to date, we commend the Executive Office for US Trustees (EOUST) for its diligent attention to the implementation of these provisions and the Internal Revenue Service for its continued oversight of the credit counseling industry. We believe that consumers have benefited along with the nation's financial system.

The main points of my statement are:

- There are more than adequate approved credit counseling agency resources available to provide pre-bankruptcy counseling at current filing levels but a focused effort would be advisable to assure that this remains the case as filings increase over time.
- Non-profit credit counseling agencies are currently providing pre-bankruptcy counseling at an overall financial loss and this situation must be addressed to help assure their continued voluntary participation; guidance from the EOUST regarding a clear standard for determining a debtor's ability to pay would be one welcome step toward that goal.

- The EOUST should also clarify what information credit counseling agencies may provide to debtors about the bankruptcy system without impermissibly providing legal advice, and should also clarify permissible relationships between counseling agencies and debtor attorneys.
- The EOUST should not remove an agency from its approved list solely because its tax-exempt status is in question, and Congress needs to do more to assure that IRS field personnel are correctly implementing and communicating the current legal criteria for credit counseling agencies to achieve and retain Section 501(c)(3) tax-exempt status.
- The EOUST needs to provide guidance to assist in establishing debt settlement plans as a sanctioned non-bankruptcy alternative for those debtors who cannot fully fund a traditional debt management plan.

Our comprehensive comments further address these operational areas.

1. Bankruptcy Filing Levels and the Adequacy of Credit Counseling Resources

As you know, bankruptcy filings underwent an extraordinary decline in 2006. According to information released by the Administrative Office of U.S. Courts , filings for all of 2006 totaled 617,600; of these, 597,965 were consumer cases and 19,695 were business cases This compares to more than 2,000,000 cases in 2005 (reflecting the rush to the courthouse in advance of BAPCPA's effective date), and filing levels for 2001-2004 in the range of 1.45 to 1.62 million cases. According to recent remarks by the head of the EOUST, current filing levels indicate that about 750,000 consumer cases will be filed in 2007, of which 60% are Chapter 7 liquidations and the remainder are Chapter 13 repayment plans. <u>We do not have an explanation for the dramatic decline in filings since BAPCPA took effect, other than that we are certain that the necessity to obtain counseling from an approved Credit Counseling Agency (CCA) prior to filing and the modest cost of such counseling (waived or reduced for about 30% of all debtors who lack an ability to pay) cannot be a factor of any significance.</u>

The present number of approved CCAs appears more than adequate to satisfy the need for pre-bankruptcy counseling at current filing levels. Even so, the credit counseling process demands a very personal approach with a distressed debtor. That process can only be effective when accomplished in a comprehensive face-to-face or telephone session. We do not believe that adequate counseling can be accomplished using the Internet alone. This consideration should be a major factor in the continuing implementation of BAPCPA and the EOUST's provider re-approval process.

We have serious concerns about the adequacy of counseling capacity should there be a significant upward spike in filings, especially if some currently approved agencies are not re-approved. We are already seeing such spikes in select locales within the U.S; for example, the Orlando Sentinel recently reported that 1,298 consumer bankruptcies were filed in the U.S. Bankruptcy Court for the Middle District of Florida during the first quarter of 2007, a 97 percent increase over the same period in 2006. A shortage of capacity in such circumstances could trigger the provisions of BAPCPA that provide for suspension of the counseling requirement in judicial districts lacking adequate capacity, and call into question the pre-bankruptcy counseling requirement unnecessarily. We believe strong efforts should be made to avoid such an outcome. Without some focused effort, there is a very real possibility that the number of participating CCAs will decline even as bankruptcy filings begin to accelerate.

2. The Need To Clarify "Ability To Pay"

Every CCA approved to provide pre-bankruptcy counseling must charge a "reasonable fee" for counseling services, must provide services "without regard to ability to pay that fee," and must provide to the EOUST its "criteria for providing services without a fee or at a reduced rate." AICCCA applauds these criteria, which are consistent with our own member accreditation standards.

Approved CCAs have, to date, been extremely cautious in assessing fees from debtors who claim they lack ability to pay. Yet approved CCAs have consistently been offering pre-bankruptcy counseling at a significant financial loss. All the information we have seen indicates that, for both AICCCA member and other approved agencies, the cost of providing a pre-bankruptcy counseling session in accord with EOUST criteria is about $50, while the average payment for such a session is about $32. Less than two percent of the present debtor population is even eligible to enter a Debt Management Plan (DMP), and many of those nonetheless choose to file bankruptcy. The opportunity so far for CCAs to offset the counseling loss with DMP income is negligible. While the income mix of counseled debtors may change in the future, especially if filing rates increase, the current situation is simply not sustainable for non-profit entities that are already navigating severe fiscal constraints.

There are only two available remedies for this situation, absent external subsidy. The first is for the EOUST to clarify under what circumstances an approved CCA may refuse to provide counseling to an individual debtor, or refuse to provide a certificate of completion to a debtor who has received counseling, where the debtor's own financial information indicates that they indeed have an ability to pay a full or reduced fee. The second is to raise the average charge for a BAPCPA counseling session, which could well have the unfortunate result that some honest debtors would incur a higher fee to offset the refusal of another, perhaps better situated, debtor to pay the same fee.

Currently approved agencies will simply not be able to continue participation over the long term if the provision of BAPCPA counseling does not become at least a break-even financial proposition. This is especially true because the actual cost of completing an application to be an approved agency is, based upon feedback from AICCCA members, substantially more than the $500 estimate provided by the EOUST in response to Executive Order 12866, and is accompanied by substantial additional costs for surety bonding as well as employee fidelity insurance.

3. The Question of What Constitutes Legal Advice

As noted earlier, bankruptcy filings have fallen dramatically since BAPCPA took effect -- which means that the average debtor attorney is many fewer prospective clients than in the first half of the decade. The debtor bar has made clear that it strongly opposed BAPCPA while it received Congressional consideration, and has already brought suit in multiple districts to seek judicial determination that its debt relief agency provision violates the Constitution.

The debtor bar has also made abundantly clear that it opposes, and resents, BAPCPA's pre-bankruptcy counseling requirement. While only about one percent of the current pre-bankruptcy counseled population is choosing an alternative to bankruptcy, it is quite possible that this percentage will grow significantly when bankruptcy filings increase and the debtor financial profile begins to include greater numbers of higher income debtors. AICCCA takes strong issue with the view of the debtor bar that the current low conversion rate of counseled debtors to a DMP or other alternative to bankruptcy should be taken as evidence that the requirement is not worthwhile. To the contrary, the large majority of individuals counseled by AICCCA member agencies have indicated that they found the budget analysis and other aspects of the counseling session to be quite useful. Indeed, we would urge Congress and the EOUST , as well as the lending community, to consider what steps could better encourage counseling to be undertaken sooner.

If we were seeing financially troubled individuals before their problems had grown dire, and before they had consulted with and even paid a substantial retainer to a bankruptcy attorney, we would probably see greater use of the available alternatives to bankruptcy. We also expect that, as filing levels climb, a greater proportion of individuals with higher incomes will be considering bankruptcy and will find a DMP a viable option. AICCCA cooperated with the General Accounting Office's recently released study of BAPCPA's credit counseling and financial education requirements, and generally agree with its findings. However, we do believe that credit counseling has significant value for individuals contemplating bankruptcy that cannot be measured solely by the percentage of counseled individuals who enter into a counseling agency administered DMP. As the EOUST has noted, about ten percent of individuals who have completed counseling and received certificates evidencing satisfaction of BAPCPA's pre-filing requirement have not gone on to enter bankruptcy, so counseling may well have provided them with the means to avoid a bankruptcy filing. In addition, the EOUST has noted that about 92 percent of those individuals filing bankruptcy at present have incomes below their state median; as filing rates increase and more higher income debtors enter the system a larger percentage may well be able to take advantage of the alternatives to bankruptcy provided by the non-profit counseling sector.

The debtor bar has made clear that it will respond to the perceived threat of credit counseling by a number of means. First, it will look for opportunities to allege that a particular approved CCA is "practicing law without a license" by providing basic bankruptcy information as part of the counseling process. Second, it will intervene in the counseling relationship by intrusively monitoring it. Third, it will press for repeal of the credit counseling requirement at the earliest political opportunity, which they apparently believe is right now.

The EOUST already requires that approved CCAs..."shall not, unless otherwise authorized by law, provide legal advice on any matter." It would be extremely helpful to the credit counseling industry if the EOUST would delineate the boundaries of what advice can be provided by an approved CCA to a counseling client regarding the availability and consequences of bankruptcy without crossing the line to providing "legal advice." It would seem obvious that a counselor assisting a financially troubled debtor needs to be able to advise that individual that bankruptcy is one available option, that bankruptcy may offer either liquidation or partial repayment of debts depending on circumstances, and that a bankruptcy will remain on the credit report for a decade. These factual matters can be readily distinguished from the giving of advice regarding whether the debtor should file for bankruptcy, what Chapter of the Bankruptcy Code would be most advantageous and appropriate, and how the court would likely treat the bankruptcy petition.

BAPCPA's legislative history supports the view that Congress intended to ensure that debtors receive informed and objective advice from two separate sources -- an approved CCA and an attorney. Assuming that the EOUST addresses the proper pre-bankruptcy roles of attorneys and CCAs in the more comprehensive regulations it has said it will propose later this year, we would urge it to clarify the legal and ethical boundaries for interaction between these two professions, particularly as regards the referral of clients to a particular agency and the collection of fees on behalf of that agency by a debtor attorney. EOUST oversight can help assure that attorney-agency relationship remains at arms' length, and that the counseling provided by each agency is comprehensive and meaningful.

4. Agency Removal

The EOUST has proposed that, in certain circumstances, its decision to revoke an agency's approved status need not wait upon an agency's exhaustion of its opportunity for administrative review but may be effected immediately by an interim directive. We hope that this short-circuiting of the administrative appeals process will be a rare exception, and take particularly strong exception to the EOUST's proposal that one factor supporting such an interim directive can be the revocation of the agency's tax-exempt status by the Internal Revenue Service.

BAPCPA is quite clear that, while non-profit status is required to become an approved CCA, tax-exempt status is not. Because tax-exempt status is not a statutory requirement, the EOUST should not deprive an approved CCA of its appeals right simply because it might lose or has lost that status. The EOUST already requires every approved CCA to complete and sign a tax waiver authorizing it to seek confidential information regarding the agency from the IRS, as well as to notify it immediately of the termination of that tax-exempt status by the IRS. Therefore, the EOUST already has access to any information developed by the IRS in the course of its audit of a particular agency. AICCCA believes that the EOUST should make its own independent judgment regarding a CCA's eligibility to provide pre-bankruptcy counseling, separate and apart from any IRS determination.

That the criteria for EOUST approval and tax-exempt status are separate and distinct has been made even clearer by IRS and Congressional actions this past year. In May, the IRS provided new guidance regarding the "methodology" analysis it would employ in its audits of credit counseling agencies. That guidance, while welcome, still leaves a great deal of subjective discretion to each IRS auditor. The credit counseling industry has noted that the actual exercise of that discretion has resulted so far in final and proposed revocations or terminations for one hundred percent of the CCAs where an audit has been concluded, and that the IRS has only approved 3 of 110 applications for tax-exempt status received from new CCAs as of May. If the EOUST tightly ties approved agency eligibility to tax-exempt status it may find that it has further diminished its ability to assure adequate long-term counseling resources.

We would also note that in 2006 Congress enacted new statutory requirements for the achievement of tax-exempt status by CCAs as part of H.R. 4, the Pension Protection Act. Those statutory provisions provide welcome clarification of the structural and operational requirements for such status, and also make clear that the provision of DMPs is consistent with tax-exempt status so long as properly integrated with counseling and educational services, and so long as associated "fair share" income from creditors constitutes no more than fifty percent of an agency's revenues. We appreciate the efforts of Chairman Sessions, Finance Committee Chairman Grassley, and Senator Coleman to provide helpful clarification of Congressional intent regarding the impact of H.R. 4 on the credit counseling industry when that bill was debated on the Senate floor. Unfortunately, we are receiving reports that some IRS field personnel are misinterpreting the effect of H.R. 4 and are taking negative actions based upon that misinformation advising AICCCA member agencies that H.R. 4 prohibits any agency that offers a DMP from receiving or retaining Section 501c3 tax-exempt status. We can only wonder how many qualified CCAs are receiving adverse IRS treatment despite the Congressional intent evidenced in H.R. 4. We therefore urge the Subcommittee to communicate with IRS Commissioner Everson and to urge him to take immediate steps to assure that IRS staff both understand and impart the correct interpretation of H.R. 4.

While the counseling industry hopes that the recent Congressional clarification contained in H.R. 4 will reduce future IRS revocations, we continue to face the possibility that many agencies will be operating as non-profit entities lacking Section 501c3 tax-exempt status. The EOUST should not foreclose the availability of their resources to serve consumers in this event when they have met all the statutory requirements of BAPCPA and its implementing regulations.

5. Debt Settlement Plans

Bankruptcy Code Section 502(k) allows the court, on a debtor's motion and after a hearing, to reduce a claim based wholly on unsecured and non-dischargeable consumer debt by up to twenty percent, if the creditor unreasonably refused to negotiate a reasonable alternative repayment schedule proposed in a timely manner by an EOUST-approved CCA that would have provided for repayment of at least 60 percent of the debt during the loan's repayment period or a reasonable extension thereof.

This new provision potentially provides approved CCAs with some ability to negotiate a debt settlement plan on behalf of a debtor who lacks the financial resources to complete a one hundred percent repayment Debt Management Plan. That option would provide a whole new class of debtors with a non-bankruptcy repayment option similar to a Chapter 13 filing. However, it also makes a future legal right of the debtor contingent upon the present action of the approved CCA, and thereby it creates some potential legal liability for CCAs as well as some ethical questions. For example, is an approved CCA compelled to attempt to negotiate a sixty percent repayment plan on behalf of a debtor who has the financial capacity to make full repayment or can the CCA exercise some discretion when a debtor requests such action?

Given the potential of new forms of Debt Settlement Plans to provide benefits to both debtors and creditors, as well as the new responsibility thrust upon CCAs by Section 502(k), AICCCA believes that the EOUST should address this topic when it publishes more comprehensive proposed regulations later this year. We hope the Subcommittee understands that if Congress were to repeal or create broad exemptions from BAPCPA's credit counseling requirement that would jeopardize the potential availability of this very significant new tool for reducing a debtor's financial obligations regardless of whether that debtor files for bankruptcy.

Conclusion

Overall, AICCCA believes that BAPCPA-mandated credit counseling has been successful and has had a beneficial affect on bankruptcy petitioners by providing them with possible alternatives and improving their understanding of specific personal financial issues. Mandated pre-discharge education will further serve to extend this consumer benefit and end the tragic circumstance of debtors emerging from bankruptcy without the requisite budgeting tools to avoid it in the future.

AICCCA appreciates this opportunity to provide input to the Subcommittee on these matters. We also appreciate the continuing dedication of the EOUST to the proper implementation of the required credit counseling provisions of BAPCPA, as well as the efforts of the IRS to ensure that consumers are protected from the small minority of credit counseling agencies who seek to take undue advantage of tax-exempt status.

Thank you for letting us share AICCCA's views with you